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PANEL HEARING MARCH 14, 2012

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HEARING OF THE WAIVER OF WASTE DISCHARGE
REQUIREMENTS DISCHARGED FROM
IRRIGATED LANDS
CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
PANEL HEARING
SAN LUIS OBISPO, CALIFORNIA
MARCH 14, 2012

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REPORTED BY: FRANCES M. GARRITY, CSR NO. 8934
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2 REQUIREMENTS DISCHARGED FROM
3 IRRIGATED LANDS
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10 CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
11 PANEL HEARING
12 SAN LUIS OBISPO, CALIFORNIA
13 MARCH 14, 2012
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17 TRANSCRIPT OF PROCEEDINGS taken on
18 behalf of the Central Coast Regional Water Quality
19 Control Board, at 333 Madonna Road, San Luis Obispo,
20 California, 93405, commencing at 9:30 a.m., Wednesday,
21 March 14, 2012, before FRANCES M. GARRITY,
22 CSR No. 8934.
23
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25

Page 2

1 APPEARANCES
2
3 FOR THE CENTRAL COAST REGIONAL WATER QUALITY
4 CONTROL BOARD:
5
6 JEFFREY S. YOUNG, CHAIRMAN
7 RUSSELL M. JEFFRIES, VICE CHAIRMAN
8 FRANCES McCHESNEY, SENIOR COUNSEL
9 MONICA S. HUNTER
10 JEAN-PIERRE WOLFF
11 MAYOR BRUCE DELGADO
12 MIKE JOHNSTON
13 MICHAEL JORDAN
14 HARVEY PACKARD
15
16 **LEAD STAFF PERSONS:**
17 ROGER W. BRIGGS, EXECUTIVE OFFICER
18 MICHAEL THOMAS, ASSISTANT EXECUTIVE OFFICER
19 LISA HOROWITZ McCANN, SECTION MANAGER
20 ANGELA SCHROETER, AGRICULTURAL REGULATORY
21 MATTHEW KEELING, PROGRAM/BASIN PLANNING
22
23 **SPEAKERS:**

	PAGE
TESS DUNHAM	17
LISA HOROWITZ McCANN	28
MATT KEELING	37
KAREN WORCESTER	46
ANGELA SCHROETER	50
MICHAEL THOMAS	63
CONGRESSMAN FARR	74
SERGIO SANCHEZ	92
HANS POSHMAN	102
BILL RITZ	107
ABBY TAYLOR SILVA	132
KARI FISHER	135
MICHAEL JORDAN	189
DR. BRAD BARBEAU	191
GREG PEPPING	195
BOB MARTIN	197

24
25

Page 3

1 APPEARANCES
2 **SPEAKERS (CONTINUED)**

JEAN-PIERRE WOLFF	199
MARC LOS HUERTOS	206
ROSS CLARK	228
MIKE STOKER	237
SARA LOPEZ	241
JENNIFER CLEARY	244
ROBERT JOHNSON	258
STEVE SHIMEK	260
GINA WHITAKER	285
NATHAN ALI	287
DANNY MERKLEY	290
KAY MERCER	291
DARLENE DIN	293
NORM GROOT	295
KIRK SCHMIDT	296
MICHAEL MARSH	298
AMY HILL	300
ANDY CALDWELL	302
LISA LURIE	304
THOMAS VIRSIK	306
MARY HYMAN	307
RICHARD QUANDT	309
JOY FITZHUGH	310
BILL THOMAS	311
LISA BODAGI	315
RANDY SHARE	316
RICHARD SALOWSKI	317
BOB CAMPBELL	318
DANA PERLAS	320
SARA DAMRON	322
ROSE FRANCIS	323
MARCELA MORALES	325
GABRIELLE SOLIS	326
KAREN ARAUJO	329
REVEREND LINDSEY RAMPTSON	330
BRAD SNOOK	332
JOE WILEY	333
RICK TOMLINSON	335
MIKE BROWN	363
DIRK GIANNINI	365
DAVID COSTA	367
RICK SWEET	373
MARY JO BUTON	375

24
25

Page 4

1 APPEARANCES
2 **SPEAKERS (CONTINUED)**

RAY MUNDOS BRITAR	376
ROBIN CHAPMAN	377
JOHN SALSBUARY	379

24
25

Page 5

A6028BD
PANEL HEARING MARCH 14, 2012

1 SAN LUIS OBISPO, CALIFORNIA
2 WEDNESDAY, MARCH 14, 2012
3
4 **MR. YOUNG:** Good morning, everyone. I'm
5 Jeff Young, Chair of the Central Coast Regional Water
6 Control Board. Welcome to San Luis Obispo. It is
7 March 14th, and why don't we begin with our roll call.
8 Mr. Briggs?
9 **MR. BRIGGS:** Oh, Harvey is going to call roll.
10 Harvey Packard.
11 **MR. YOUNG:** Oh, okay.
12 **MR. PACKARD:** Jeffrey Young.
13 **MR. YOUNG:** Here.
14 **MR. PACKARD:** Russell Jeffries?
15 **MR. JEFFRIES:** Yes.
16 **MR. PACKARD:** Bruce Delgado.
17 **MR. DELGADO:** Here.
18 **MR. PACKARD:** Monica Hunter.
19 **MS. HUNTER:** Present.
20 **MR. PACKARD:** Mike Johnston.
21 **MR. JOHNSTON:** Here.
22 **MR. PACKARD:** Michael Jordan.
23 **MR. JORDAN:** Here.
24 **MR. PACKARD:** Jean-Pierre Wolff?
25 **MR. WOLFF:** Here.

Page 6

1 **MR. YOUNG:** Okay. Thank you.
2 Mr. Briggs, introductions?
3 **MR. BRIGGS:** Thank you, Mr. Chairman.
4 Welcome everybody. We just heard from
5 Harvey Packard of our Staff over there, our Assistant
6 Executive Officer, Michael Thomas, is standing right
7 there, and to my left is Frances McChesney, our counsel
8 from the State Water Resources Control Board, who
9 represents the Board.
10 We have testimony cards available.
11 John Gonee is at the door, right there, and has those
12 cards available, so if you're interested in speaking on
13 any items today, please fill those out and hand them to
14 Staff, so we'll know to call your name.
15 Restrooms are out there, down this way, I
16 believe. And we would appreciate if you would turn off
17 your cell phones, or at least so they don't make
18 noise. I just reminded myself.
19 Let's see. And we'll be hearing is we'll be
20 introducing other Staff as they come up later today.
21 And, I believe, that's it for now,
22 Mr. Chairman.
23 **MR. YOUNG:** Okay. Thank you, Mr. Briggs.
24 Staff recognitions?
25 **MR. BRIGGS:** Yes.

Page 7

1 Mr. Chair, this morning we want to recognize
2 seven Staff, representing both the State Board, and
3 that is the Staff from both of State Board and our
4 region, who were awarded Superior Accomplishment Awards
5 for their outstanding job performance for the Water
6 Board, the bigger Water Board. Their joint effort to
7 develop and implement the Water Board's Electronic
8 Notice of Intent, leveraging the Water Board's
9 Geotracker Data Management System, that's an existing
10 system, this is in addition to it, for irrigated
11 agriculture, has made an exceptional contribution
12 towards advancing Water Quality Improvement, improving
13 the effectiveness and efficiency of the Water Board.
14 So State Board and/or Staff worked together
15 and did a really incredible and unprecedented job to
16 implement this project in a very short window of time.
17 And that involved coordinating with the agricultural
18 industry, technical assistance providers, working with
19 hundreds of growers to provide compliance assistance,
20 and ended up representing over 84 percent enrollment of
21 irrigated agricultural acreage on the Central Coast,
22 which was pretty outstanding for initial rollout.
23 The team demonstrated a high commitment to
24 water quality and exceptional customer service, and
25 were each integral to the success of the project. This

Page 8

1 system is the first of its kind in California, and very
2 possibly the nation, for irrigated agricultural. So we
3 have some plaques here. By the way, the two State
4 Board representatives were unable to be here today,
5 it's my understanding, but if we can have Elaine Shaul,
6 Monica Barricarte, Karen Huckelby, Hector Hernandez and
7 Wey Lu come forward, please.
8 I feel like we should have some music for
9 you. Why don't you just come up here, please. Is
10 Wade not here, too? I guess, John Wade is not here.
11 Okay. I guess John Wade couldn't be here, but Elaine,
12 here's your plaque. Karen, here's your plaque.
13 Monica, here is your plaque, and Hector, last, but not
14 least, of course, here's your plaque. I want to -- the
15 Board and I want to thank you very, very much for your
16 outstanding commitment and your accomplishment, and
17 congratulations, and how about a round of applause.
18 Thank you, again.
19 **MR. YOUNG:** Okay. Why don't we move on to Item
20 Number 4 in our Agenda, the Conditional Waiver of Waste
21 Discharge Requirements For Irrigated Agricultural.
22 Mr. Briggs.
23 **MR. BRIGGS:** Thank you, Mr. Chairman.
24 This is Item Number 4, and we'll start
25 with -- oh, I'm sorry.

Page 9

A6028BD
PANEL HEARING MARCH 14, 2012

1 **DR. WOLFF:** And, for clarification, I'm going to
2 recuse myself from participating in the discussion
3 pertaining to Item 4 of the Ag Waiver, because I myself
4 am an agriculture Discharger; however, I will stay here
5 in the room, in the front row and listen to all the
6 upcoming comments, but I just wanted to clarify this
7 with all of you, thank you.

8 **MR. BRIGGS:** Thank you, Dr. Wolff.

9 **MR. DELGADO:** Mr. Chairman, is this the
10 appropriate time for Ex Parte comments?

11 **MR. YOUNG:** It will be, I think, once I get
12 through this, I've got an opening statement and then
13 we'll go ahead and get to Mr. Delgado.

14 **MR. DELGADO:** Thank you.

15 **MR. YOUNG:** Okay. This is the time and place for
16 a public hearing to consider adoption of a Waiver of
17 Waste Discharge Requirements for Discharges of Waste
18 from Irrigated Lands. A monitoring and reporting
19 program and certification of the subject environmental
20 impact report.

21 This hearing is being held before the
22 Central Coast Regional Water Quality Control Board. I
23 am Jeff Young, Chair of the Regional Board. I am
24 joined by Vice Chair, Russell Jeffries, Monica Hunter,
25 Mike Jordan, Mike Johnston and Bruce Delgado.

Page 10

1 For your information, as you just heard,
2 Bruce, Board member Dr. Jean-Pierre Wolff, has a
3 conflict and may not participate on this matter as a
4 Board member, in accordance with State Law.

5 The official record of the testimony of this
6 hearing will be created by our court reporter. We are
7 also using a tape recorder and videotape recording
8 today, but the recordings will not be the official
9 record of the hearing.

10 At the end of the hearing today, I will close
11 the record in this matter, and this Board will
12 deliberate and arrive at a decision. The Board may
13 adopt, reject or modify the proposed Order. The Board
14 will accept oral comments today. As you can see,
15 there's a great deal of interest in this matter. In
16 Order to allow for an orderly and fair process, and to
17 allow time for Board deliberation, I will limit the
18 time per speakers. I have allowed extra time to those
19 persons who have requested extra time in advance, as
20 set forth in the Public Notice for this item. The rest
21 of the public will have up to three minutes, but it may
22 be less, depending on the number of speakers. If you
23 wish to speak, please submit a speaker card now. They
24 are available at the back of room, and I will accept
25 speaker cards until noon. Following the lunch break,

Page 11

1 which we will try to limit to one hour, I will announce
2 the amount of time I will be able to allocate for
3 public speakers. Please summarize your comments and
4 avoid repetition.

5 The Board members have fully reviewed the
6 record, and will consider all comments. The Board has
7 three recently appointed Board members. The new Board
8 members have become thoroughly familiar with the record
9 and are prepared to consider the record and your
10 comments today and deliberate on this matter.

11 Would any of you, if I call, would you like
12 to add anything?

13 Mr. Jeffries?

14 **MR. JEFFRIES:** Mr. Chairman, I know there is some
15 concern that I wasn't present at the February meeting
16 and workshops, and I want to make sure to let both the
17 Board members and the public know that I have listened
18 to the audio of that meeting, at least twice, some
19 sections more than that. And going back to actually in
20 the fall, when I was appointed, it was made clear to
21 me, both in the pre-appointment and post-appointment
22 process with the Governor's office, that I was to keep
23 a clear and open mind on this matter. They knew it was
24 coming up right away and they knew that the
25 appointments of the three people would immediately lead

Page 12

1 to a quorum and it would bring the item up
2 immediately. So I'd just like to reassure both the
3 public and my Board members that I have reviewed both
4 of the meeting in February, the past three years' worth
5 of the documents, both audio and written, and I do have
6 an open mind. Thanks.

7 **MR. YOUNG:** Thank you.

8 Anyone else?

9 **MR. DELGADO:** I would like to disclose that
10 because I have the duty of being major in the city
11 where I live, I have a lot of interactions with public
12 and elected officials, and on numerous occasions,
13 people have made very cursory comments to me regarding
14 this issue, and in some cases, they've made negative
15 comments about the process or this Board, and in some
16 cases they've just said things like, "Boy, it sounds
17 like a really tough issue. Wouldn't want to be in your
18 shoes. How is it going?" that kind of thing. But with
19 none of those, have I ever discussed the particulars of
20 the Ag Order, and so although it's a very complicated
21 and difficult issue, I remain fully impartial and
22 unbiased, and I just wanted to disclose that.

23 **MR. YOUNG:** Thank you, Mr. Delgado.

24 Anyone else have anything to add?

25 Okay. The hearing will proceed as follows:

Page 13

A6028BD
PANEL HEARING MARCH 14, 2012

1 Regional Board Staff will give their presentation first
2 and then be followed by the following groups that have
3 requested extra time. The Ag Working Group and Farmers
4 for Water Equality will have 60 minutes of time, one
5 hour. Dr. Barbeau has five minutes, or he could be
6 pulled into the Ag Working Group 60 minutes, if he
7 needs more time. That's up to them. Dr. Los Huertos
8 has 10 minutes. Ross Clark, Central Coast Weapons
9 Group, has eight minutes. Ms. Cleary, Clean Water
10 Action, has 24 minutes. The Otter Project Coast
11 Keepers, has 24 minutes, and then we'll have public
12 comments, three minutes or less, if needed, to
13 accommodate everybody. Closing statement rebuttal of
14 Farm Bureau Abatement may use some of their 60 minutes
15 remaining time for a closing statement, after other
16 commenters have made their statements. And that means
17 after the conclusion of all of the three minute or less
18 individual speakers, Farmers Bureau can allocate
19 additional time, if they choose, as a final rebuttal or
20 conclusion comments. That's up to them.

21 After the conclusion of testimony and
22 comments, Staff will be provided an opportunity to
23 summarize and make a recommendation.

24 A timer will be used to allow for the orderly
25 conduct of the hearing. I've requested that you end

Page 14

1 your comments when your time is complete. When the
2 timer buzzes and the red light comes on, I will allow
3 you to complete your sentence and then move on to the
4 next speaker. We appreciate your cooperation. Folks,
5 I know that I have been pretty lenient, historically,
6 with the buzzer. Typically, even when the red light
7 goes off and three minutes goes off, to allow people
8 extra time. Today, I'm going to ask you to please
9 finish your sentence when you see the red light.
10 Finish your sentence. Let's conclude, so we can move
11 on to the next speaker.

12 Board members, Executive Officers and Counsel
13 may ask questions, at any time. I request that the
14 Board members hold questions until the end of
15 presentations, to limit repetition and provide for an
16 orderly process.

17 And to my colleagues, this is going to be a
18 little bit different, this Board meeting, as I've
19 conducted it in the past, so we can get through
20 everything in a more orderly and timely way.

21 I'll do my best not to ask questions
22 regarding speakers. We'll listen to what someone has
23 to say and take notes, and then we can all ask
24 questions at the conclusion of that speaker. I think
25 that helps us.

Page 15

1 To make this easier, we've asked for outlines
2 and slide printouts so that you could see from the
3 outline, the potential question, maybe answer in an
4 upcoming session, and you can easily jot down remaining
5 questions next to the slide in the printout to make it
6 easier to remind yourself later of the question and
7 what part of the presentation process the question is.

8 We will begin the Staff's presentation,
9 Mr. Briggs.

10 **MR. BRIGGS:** Thank you.

11 Before we start the presentation, I think
12 there's something she wants to say.

13 **MS. McCHESNEY:** I just want to say that I think --

14 **MR. BRIGGS:** Speak up.

15 **MS. McCHESNEY:** -- that I think these microphones
16 are live all the time.

17 Is there a way to turn them off? Does anyone
18 know?

19 MR. BRIGGS: No.

20 **MS. McCHESNEY:** Okay. Since they're live, Board
21 members, in Order to have the recording be accurate,
22 that we not make noises during the proceeding.

23 **MR. DELGADO:** Before you start, I need a pad.

24 **MR. YOUNG:** Do you have any extra pads?
25 Okay. Go ahead.

Page 16

1 **MS. DUNHAM:** Thank you.

2 For the record, Tess Dunham, with Somach
3 Simmons & Dunn here, representing the Farmers for Water
4 Quality Group. We just have a couple of quick
5 procedural objections we want to make. First, we
6 appreciate the review of the Los Fuertos report to make
7 a determination whether it should be in the record.
8 Unfortunately, we do disagree with the Chairman's
9 ruling with respect to not allowing it in, but going
10 forward, there are some references within the Staff
11 Report and some new materials that were just released
12 yesterday that we do believe is prejudicial with
13 respect to the agricultural community, and having it in
14 the record, in that it is information that came in
15 after the close of the written comment period.
16 Specifically, in the Staff Report, on Page 8, there is
17 a reference to the September 2011 presentation by
18 Dr. Harter that was made before this Board that was not
19 made in conjunction with the hearing or workshop on
20 this Ag Waiver, and, therefore, we think it is
21 improperly referenced within the Staff Report.

22 There is a reference to an October 2011,
23 State Water Board Report, also within the Staff
24 Report -- I'm sorry, I don't have the exact page
25 number -- that we think is an improper reference,

Page 17

A6028BD
PANEL HEARING MARCH 14, 2012

1 again. That is, referenced as material that has come
2 about after the close of the written comment period.
3 There is a reference in materials that were
4 released yesterday, that was circulated to a
5 presentation by the Lawrence Livermore Laboratory that
6 was made in September 2011, as well, which again, was
7 made not in conjunction with the workshop or the
8 hearing, and, therefore, was also made after the close
9 of the written comment period, and also there are
10 excerpts from the 2004 Administrative Record, which
11 would be improperly included in this record.
12 The 2004 record stands alone as its own.
13 This record begins with the adoption of the 2004 Order,
14 may include the 2004 Order, the 2004 record itself is
15 not a part of this Administrative Record. So those are
16 the objections we would like to place with respect to
17 information that is referenced, and we believe that
18 information, by allowing it in, would be prejudicial to
19 Agriculture, as we have not been given the opportunity
20 to provide written comment with respect to that
21 information.
22 Thank you.
23 **MR. YOUNG:** You gave us Page 8. I got that down.
24 **MS. DUNHAM:** Yes.
25 **MR. YOUNG:** And there was reference to the

Page 18

1 Lawrence Livermore Laboratory. What page?
2 **MS. DUNHAM:** That is in the question and answer
3 document that was released yesterday.
4 And the October 2011 State Water Board
5 Report, I don't have the exact page number, but it's in
6 the Staff Report, as well.
7 **MR. YOUNG:** Can you share with us how you feel the
8 referencing of this material is prejudicial to your
9 clients?
10 **MS. DUNHAM:** Well, you are referencing
11 information, scientific information, with respect to
12 the Harbor Report of Lawrence Livermore, and using it,
13 in what appears to me, as justification for certain
14 findings for information with respect to the Order.
15 Because that information was not presented in context
16 with this hearing, nor were we given the opportunity to
17 review that information and provide written comments,
18 that it would be prejudicial for inclusion in reference
19 to that information, at this point in time. Any
20 information that this Board is relying upon with
21 respect to evidence and technical information should
22 have been available for us to provide written comment,
23 prior to close of the written comments phase.
24 **MR. YOUNG:** Comments?
25 **MS. McCHESNEY:** And on the issue of the references

Page 19

1 to those documents, I think that they're not part of
2 the written record closed, whenever they were closed
3 last summer.
4 **MS. DUNHAM:** August 1st or 2nd.
5 **MS. McCHESNEY:** So any documents that were
6 referenced are not part of the record, and so I agree
7 with that comment.
8 As far as the 2000 reference to the 2004
9 Order, I don't think it's quite as clean cut, but at
10 least the Order itself, the 2004 Order, is part of the
11 record, but there are some. For example, the CEQA
12 document refers to the Declaration that is prepared for
13 the 2004 Order, and that is part of the record for this
14 item because the Sequa document, before the Board
15 today, is the subsequent Environmental Impact Report
16 that supports the negative Declaration and are issues
17 that are in the 2004 Report, so that aspect of the
18 record is and I have to reconsider more whether there
19 are any other aspects of the 2004 record that should be
20 part of this record, but at least those two things are
21 definitely part of the record, so --
22 **MS. DUNHAM:** I think what was referenced
23 yesterday, or circulated yesterday, were excerpts
24 unrelated to either of those.
25 **MS. McCHESNEY:** Correct. And I just am not sure

Page 20

1 that I totally agree with your objection, as far as the
2 past, previous record, but I'll give it some thought
3 and get back to that later.
4 **MR. YOUNG:** Okay. Thank you.
5 **MR. DELGADO:** Chairman?
6 **MR. YOUNG:** Yes?
7 **MR. DELGADO:** I just want to caution the Board
8 members to speak into your microphone because it's hard
9 to hear here.
10 **MR. YOUNG:** Okay. When I was talking or Frances?
11 **MR. DELGADO:** When you were talking.
12 **THE REPORTER:** Both.
13 **MR. YOUNG:** Okay. Why don't we move forward with
14 Staff presentation, Mr. Briggs.
15 **MR. BRIGGS:** We'll do that as soon as I cover a
16 few more logistic items.
17 **MR. YOUNG:** Okay.
18 **MR. BRIGGS:** Let's see. We have Spanish
19 interpreters' translation assistance in the back of the
20 room. There are headsets available at the front
21 table. Are they over here? And, um, our interpreters
22 are Alejandro Bronco and Afisha Hyatt in there, back
23 there in the back corner. We also have
24 Hector Hernandez, of our Staff, who is available for
25 assistance with Spanish/English, if that's needed. We

Page 21

A6028BD
PANEL HEARING MARCH 14, 2012

1 have a court reporter, and I'm sorry, I don't have her
2 name right now, but we will -- maybe Michael can get
3 that, at some point, and then after the break, we will
4 provide the information for the reporter, in case you
5 need to contact the court reporter. And I've asked our
6 court reporter that if you're getting overwhelmed, at
7 any point, either ask us to slow down or take a break,
8 whatever you need. We appreciate your being here. And
9 Elaine Staul is going to be helping out with the
10 recording notes, as well.

11 **MR. YOUNG:** Okay. Mr. Johnston, as a --
12 **MR. JOHNSTON:** Perhaps we should announce, in
13 Spanish, the availability of Spanish translation
14 because it doesn't do much to announce it in English.
15 "El instruccion en Espanol hay unas personas
16 alli atras en el cuarto que escuela instruccion."
17 **MR. BRIGGS:** Thank you, Mr. Johnston.
18 And now one other logistics item. We just
19 have a few people who are standing, maybe that's
20 because you want to, but there are plenty of seats
21 available. I see plenty of empty seats, right here, in
22 the first five rows, so feel free to take a seat, if
23 you'd like to.
24 Okay. So go ahead with the clicker.
25 So our recommendation today is regarding the

Page 22

1 updated -- thank you, Lisa -- is updated additional
2 Waiver of Waste Discharge Requirements for Discharges
3 from Irrigated Lands. And the action before the Board
4 is to consider voting on adoption of this updated Order
5 and there is a number -- there's part of a quote from
6 our mission statement for the Water Board, "I'm sure
7 the highest reasonable quality for the water, for the
8 state, is a good thing to keep in mind." So as an
9 overview, after my introduction, we'll talk about the
10 process that has gone into this Order, a brief summary
11 of the water quality conditions.
12 We've gone over these things many times in
13 the last three and a half years. A summary of the
14 draft Order itself. We'll have a bit more discussion
15 on implementation and enforcement, followed by our
16 conclusion. Then will be the opportunity for public
17 comment, and our chair has outlined how that will work,
18 and then after that, public comments, a Staff
19 presentation.
20 So, again, we've talked about the severity of
21 the problems that we have, unfortunately, in the
22 Central Coast. I've listed these in a little bit
23 different way from in the past, in that I'm -- I've put
24 these things in pretty much priority Order, with the
25 top priority at the top; that is, nitrate groundwater.

Page 23

1 This is a public health problem, so, consequently, we
2 say that's a higher priority, the highest priority, and
3 then toxicity nitrate and nitrate in surface water and
4 sediments, on down the list. Now, to provide a little
5 perspective on these things, and the Board's
6 involvement, I'll start at the bottom with what I'll
7 say is the lowest priority issue, although this is
8 still very important, as demonstrated by the fact that
9 the Board has, in the recent past, taken some pretty
10 serious enforcement actions for sediment problems, just
11 sediment problems, in some pretty small areas. For
12 example, some against CalTrans for some construction
13 projects, for some Ag property owners for grubbing, for
14 construction sites. And sometimes, these have been at
15 the tune of hundreds of thousands, hundred thousand
16 dollars or multiple hundreds of thousands of dollars.
17 That shows you how serious the Board has taken the
18 product of sediment for some small isolated areas for
19 nutrients in surface water. Similarly, the ordinance
20 required municipalities to spend tens of millions of
21 dollars for upgrading their discharge to meet nutrient
22 requirements for discharged surface water, especially
23 nitrate and nitrogen. For toxicity, similarly, the
24 Board has had requirements that have prompted
25 municipalities to eliminate toxicity from their

Page 24

1 discharges. For example, ammonia from waste water
2 treatment plants, to the tune of tens of millions of
3 dollars. And these are in pretty small areas. Short
4 segments of streams. So it demonstrates the severity
5 of the way the Board's treated these problems as being
6 serious, even though they're in fairly small areas.
7 And then, of course, as far as drinking water, the
8 Board has taken action with regard to perchlorate,
9 which has a lot of similarities as a nitrate in terms
10 of the way it acts and it has a maximum contaminate
11 level, the way it travels in groundwater basin. When
12 we discovered plumes in the north part of the region
13 from a few sites, the Board took very swift and
14 stringent action to require replacement water with
15 immediate enforcement with time schedules from
16 remediation, that is, pulling that water out of the
17 groundwater, remediating it, cleaning this up at tens
18 of millions of dollars per case. So we've had these,
19 and we've had other threatened well examples where from
20 leak sites relatively small plumes, less than sometimes
21 a 10th of an acre as far as the plume, and we have had
22 communities come to our Board meeting, like today, but
23 going ballistic about what is the Board going to do
24 about our wells that are threatened, and these were
25 cases where the wells were not even tainted by the

Page 25

A6028BD
PANEL HEARING MARCH 14, 2012

1 constituents. They definitely weren't contaminated,
2 yet the Board took severe and stringent action to those
3 small cases, so how does that compare with what we have
4 before us today? You've seen this, at least the Board
5 has seen this slide several times, where we have those
6 depicted here different sources that we deal with.
7 Timber, for example, where it is actually mostly
8 related to sediment problems, urban storm water, animal
9 problems and our relative degree of regulation, with
10 really, historically, the most regulation for point
11 sources and drinking water pollution cases, again, like
12 I said, the highest priority, because of public health
13 threats and landfills in here, but here is where we are
14 depicting the degree of regulation for the existing,
15 that is the 2004 continuing Waiver.
16 Now, as far as relative degree of water
17 quality impacts, timber, we think is down here,
18 landfill is down here, municipal waste water a little
19 bit more of a threat, urban storm water, and again,
20 high priority drinking water pollution cases and we see
21 irrigated agricultural related problems as being at the
22 far end of the scale, because it has all those problems
23 that are severe and not just in isolated areas. They
24 are widespread through numerous areas in our region.
25 So, for example, with drinking water pollution cases,

Page 26

1 we're not talking about plumes that are a 10th of an
2 acre or less than an acre, we're talking about hundreds
3 of square miles that exceeds the maximum contaminant
4 level. That's why this is such a huge issue of such
5 huge importance and why it's necessary for us to be
6 acting to do something about it. It's a change that's
7 mismanagement of what we have now, compared to the
8 threat.
9 So here's what we're proposing with the 2012
10 draft Order, where we still have a low degree of
11 regulation for the Tier 1, which Angela Schroeter will
12 be talking about in a minute, a greater degree for
13 Tier 2 and Tier 3. And these are degree of threat as
14 we depicted them. So, again, here's -- here are those
15 problems. What are we proposing to do about it?
16 Without getting specific, it's, basically, the Order
17 includes that we are calling for implementation
18 practices. That doesn't mean that we're specifying the
19 practices, just the practices that the growers
20 typically tell us what they are trying to do anyway, or
21 to accomplish groundwater protection, to accomplish
22 discharge control, and really, the most important thing
23 boils down to irrigation nutrient management. There
24 are various ways to do that. We're not specifying
25 how. And then, coupled with that, so that we know that

Page 27

1 we are making progress, we're monitoring reporting, to
2 effectively indicate that we have loading reductions in
3 water quality improvement. So now we're going to move
4 on to the process to renew the agricultural Order, and
5 Lisa McCann, which is our section manager, is going to
6 be discussing that section.
7 Lisa McCann.
8 **MS. McCANN:** Thank you, Roger.
9 Board members, you might recall, I used this
10 timeline at the February Workshop to illustrate the
11 process to review the Agricultural Order, and I'm going
12 to use it again, just to review and point out, once
13 again, that this is one of the most extensive public
14 processes that this Board has used for any decision you
15 have ever made.
16 We have been at this process to renew the
17 Agricultural Order for about three and a half, almost
18 four years now. We started in July 2008, and we're
19 here today in March 2012, with our 7th Board Workshop
20 or a Hearing, each of the blue stars on this timeline
21 represents a Board workshop or a hearing, and in each
22 of those, you've had multiple hours of opportunity for
23 members of the public to address you and share their
24 views and report on issues related to the item before
25 you. The process also involves several written public

Page 28

1 comment periods. Those are shown as green boxes along
2 this timeline, and altogether, we received about 2,000
3 comment letters during all these various written
4 comment periods.
5 Staff made multiple revisions to the Draft
6 Order in response to all of these written comments.
7 You see, here, four different iterations and, in fact,
8 that makes a fifth as far as the recommendation that
9 you have before you today. Most of those revisions
10 addressed comments predominantly from agricultural
11 interests. In addition, I'm going to review some
12 background, a little bit of history, on the engagement
13 and cooperative efforts between agriculture and various
14 state, public and the Water Board prior to adoption of
15 the first Conditional Waiver in 2004.
16 In the '90s, Water Board Staff was
17 implementing the State's Nonpoint Source Pollution
18 Control Policy. At that time, that State policy
19 emphasized voluntary efforts and only stepping up to
20 regulatory encouraged efforts or regulatory required
21 actions if it was found that source of pollution was
22 contributing to cause water quality problems.
23 So Staff was very engaged in supporting and
24 funding voluntary efforts, such as education and
25 outreach capacity building for local groups and

Page 29

A6028BD
PANEL HEARING MARCH 14, 2012

1 coalitions, agricultural water quality research and
2 demonstration projects.

3 Between 2000 and 2011, the State and Central
4 Coast Water Board funded Agricultural Water Quality
5 projects in the Central Coast region, and we spent or
6 allocated out about \$44 million in public grant funds
7 and an additional \$12 million in settlement funds or
8 apportionment fees. Also, during that same time
9 period, the State Water Board Research Control Board
10 made about \$600 million available statewide, for
11 similar Agricultural Water Quality Projects.

12 The types of projects funded in this region
13 included agricultural Water Quality Research,
14 Irrigation and Nutrient Management Practice
15 Demonstrations, as well as actual implementation,
16 Erosion Control Demonstrations, and implementation, and
17 wetland and other treatment systems, monitoring and
18 habitat Restoration.

19 Also during the '90s, the Central Coast
20 Ambient Monitoring Program was gearing up and started
21 collecting water quality data, along with other local
22 agencies and citizens' monitoring groups. The results
23 of this monitoring data informed or was used to
24 identify waterbodies, to add to the Clean Water Act,
25 Section 303 List of Impaired Waters. In the Central

Page 30

1 Coast Region, the results of that evaluation included
2 adding many impaired waters throughout the region for
3 several different pollutants.

4 In 2002, the majority of the listings in the
5 Central Coast Region were and remain, to this day, for
6 sediment, nutrients and pesticides for toxicity in
7 agricultural areas.

8 In 2004, the State Water Resources Control
9 Board adopted the Policy for Implementation and
10 Enforcement of the Nonpoint Source Pollution Control
11 Program. That policy required the Regional Boards to
12 regulate all nonpoint sources of pollution, and to use
13 permitting authorities to do that.

14 The policy further required Nonpoint Source
15 Dischargers to do several things. Dischargers must
16 comply with permits or waivers, as individuals, and may
17 comply with these permits or waivers via programs of a
18 third-party coalition. Any program of a third-party
19 coalition must meet five key elements and be approved
20 by the Water Board. The key elements include the
21 following: Pollution control that achieves and
22 maintains water quality objectives, management practice
23 implementation and verification, time schedules and
24 quantifiable milestones, and on-time schedules and
25 milestones, the policy explicitly states that those are

Page 31

1 to apply when it's acknowledged that it will take time
2 to meet water quality objectives. Element 4 is
3 feedback mechanisms so the Regional Board dischargers
4 and the public can determine if the actions taken are
5 achieving their stated goal, or if different actions
6 need to be required or adjusted.

7 And finally, consequences for failure to
8 achieve objectives, the Board is responsible is the
9 Boards are responsible for identifying those and making
10 it clear that individual dischargers must take all
11 necessary actions to meet water quality objectives.

12 The policy was adopted in 2004, which was
13 20 years after hundreds of millions of dollars were
14 granted from public funds for various cooperative
15 efforts and water quality improvement efforts between
16 agriculture, government agencies and other
17 stakeholders.

18 In 2004, the policy was also adopted in
19 response to increasing evidence of water quality
20 problems. This is before we had the monitoring data,
21 that we have today, that indicates severe and
22 widespread surface and groundwater problems from
23 agricultural discharges.

24 The policy was developed and adopted at the
25 same time, and in parallel with, the 2004 Conditional

Page 32

1 Waiver that currently applies to irrigated agricultural
2 lands in our region, and the policy fundamentally
3 shifted the State's emphasis from voluntary approaches
4 that focused more on public funding and providing
5 technical assistance, education and outreach, to
6 instead requiring regulated approaches. As described
7 in the policy specifically, those regulated approaches
8 established clear requirements for dischargers to
9 implement and verify their practices, meet water
10 quality objectives, monitor and report, and be
11 accountable by adapting their practices or incur
12 enforcement if water quality requirements are not met.

13 The State Nonpoint Service Policy, adopted in
14 2004, continues to support and encourage implementation
15 by third-party groups or coalitions as long as those
16 third-party groups' program meet the terms of the
17 policy. With that frame of reference, we support the
18 Farmers for Water Quality efforts to use a third-party
19 coalition, as this has been recognized as a valuable
20 structure for controlling nonpoint source pollution to
21 meet current requirements. The Draft Order that's
22 purposed encourages and allows for such coalitions. An
23 example is the existing Central Coast Vineyard
24 Sustainable Practice and Certification. However, as
25 we've reported to you many times in all of our Staff

Page 33

A6028BD
PANEL HEARING MARCH 14, 2012

1 reports, we continue to find that the Ag Proposal is
2 legally inadequate and unenforceable because it's not
3 crafted as required by the Nonpoint Source Policy or
4 consistent with the Water Code. From our prospective,
5 the main flaw with the proposal is the proposed
6 reporting elements. These are the annual report
7 elements that have been presented to us in their
8 proposal: Names of participants, operations audited,
9 watershed where audits will be conducted, aggregated
10 summary of audit results, summary of third-party
11 assistance, and summary of education workshops.
12 We find these insufficient, given the
13 severity of water quality conditions legally
14 inadequate, and lacking in accountability. These
15 reporting elements don't require measurement or
16 reporting of any indicators by dischargers that
17 demonstrate effectiveness of management practices to
18 control waste discharges nor pollution reduction within
19 the five-year term of the Order, and most of the
20 reporting elements describe activities by the
21 third-party group, and not activities or progress by
22 the actual dischargers. Monitoring and reporting of
23 Discharger effectiveness and pollution reduction are
24 necessary and required by the Water Code and the
25 Nonpoint Source Policy.

Page 34

1 This slide shows the proposed annual
2 reporting requirements for the Staff Draft Order
3 compared to the Ag Proposal. And, again, I use this to
4 show you that the reporting elements in the Ag Proposal
5 lack meaningful or accountable short term measures of
6 progress because they did not include nitrate loading
7 indicators, pollution reduction indicators, practice
8 effectiveness indicators, or any individual discharge
9 monitoring.
10 In addition to the comments and alternative
11 proposals from Agriculture, we also received many other
12 comments on a lot of input on the Order. Environmental
13 organizations and environmental justice organizations
14 have generally been in support of the Order and
15 critical that the Order does not adequately protect
16 water quality.
17 Environmental organizations also submitted an
18 alternative proposal, and that proposal was essentially
19 the February 2010 Staff Draft Order, with some
20 additional requirements as shown listed here. We also
21 engaged with many other government, regulatory and
22 resource management agencies, and we specifically
23 received letters or comments of support on Drafts of
24 the Order from Staff of Monterey Regional Stormwater
25 Management Program, both the Regional and State offices

Page 35

1 of the California Department of Public Health,
2 California Department of Fish and Game, State Parks
3 Department, State Coastal Commission, National Marine
4 Fisheries Service, Monterey Bay National Marine
5 Sanctuary, and the US Environmental Protection Agency.
6 Sam Zigler, the manager of the Watersheds
7 Office of the US EPA Region 9, Water Division sent this
8 comment: "I've reviewed the Order and find it
9 to be an excellent program that I hope gets
10 approved. My support for the program is
11 based largely on its consistency with the US
12 EPA approved California Nonpoint Source Program
13 that calls for the appropriate use of
14 California's Regulatory authorities to foster
15 more extensive implementation. The program as
16 proposed serves as an excellent example of using
17 state authorities to address water quality
18 impairments and focus on protecting public
19 health. Furthermore, the program appears to be
20 based on extensive data, and documentation is
21 extremely well developed, and presented and can
22 serve as a national model to address agricultural
23 dischargers, particularly those causing water
24 quality impairments and a threat to public
25 health."

Page 36

1 Cindy Forbes, Chief of the Southern
2 California Field Operation's Branch sent, this
3 comment: "The Department of Public Health supports
4 the requirements outlined in the Draft
5 Agricultural Order and encourages the adoption
6 of the Order by your Board. Protection against
7 continued nitrate contamination of the
8 groundwater in the Central Coast region will
9 minimize the need for additional treatment of
10 public water supply sources from this
11 contaminant which poses a significant public
12 health threat."
13 We incorporated most of the comments received
14 through the various edits we made to the Draft Order
15 that is before you today, or we have provided
16 defensible rationale for maintaining the conditions as
17 written to adequately control waste discharges from
18 irrigated agricultural operations and to improve water
19 quality.
20 That concludes my comments, and now
21 Matthew Keeling will speak about the groundwater
22 quality condition.
23 **MR. KEELING:** Good morning, Mr. Chairman, members
24 of the Board.
25 There are approximately 1.5 million people in

Page 37

A6028BD
PANEL HEARING MARCH 14, 2012

1 the Central Coast Region that are relying on
2 groundwater for a great percentage of their drinking
3 water supply. In some areas, like the Salinas Valley,
4 groundwater accounts for almost 100 percent of the
5 drinking water supply as well as agricultural and the
6 industrial supply. The nitrate pollution is one of the
7 most widespread and severe public health and water
8 quality problems in our region as well as the State.
9 Major portions of entire groundwater basins and
10 aquifers are polluted with nitrate, and the data
11 documenting the significance of this problem is
12 overwhelming, along with the numerous lines of evidence
13 documenting the irrigated agricultural is, by far, the
14 largest source of the ongoing nitrate pollution within
15 our region as well as the State. Subsequently, there
16 are thousands of people within our region that are
17 potentially susceptible to having their drinking water
18 polluted with nitrate. This is particularly true for
19 people within the Spanish communities that are
20 generally in rural agricultural regions of our region.
21 Although a number of case studies in our region
22 indicate that we will see improved drinking water
23 conditions in localized areas, in relatively short time
24 periods. It's likely going to take several decades
25 before we start to see improving water quality

Page 38

1 conditions on a regional scale, in our region as the
2 result of reduced nitrate discharges. Consequently,
3 it's going to take a long-term commitment from us and
4 various other state agencies, local agencies, if we're
5 going to effectively address the significant water
6 quality possible health problems.

7 The good news is that there are studies,
8 available now, that indicate that significant
9 reductions in fertilizer application and subsequent
10 discharge to groundwater are achievable using readily
11 available nitrate management and irrigation management
12 techniques. In some cases, implementation of those
13 methods will result in a cost savings to the growers,
14 and for various crops, reduced fertilizer application
15 will also likely achieve drinking water standards in
16 the water that is being discharged from agricultural
17 areas to groundwater. I want you to look away really
18 quickly. I'm about to skip over this next slide
19 because it unfortunately contains information from the
20 recent trip that was referenced by Tess. And, I'm
21 going to skip right to this one here.

22 Lawrence Livermore National Laboratory
23 recently conducted two nitrate driven focus studies in
24 our region. The most recent of which was a nitrate
25 base transport study in the Salinas Valley that

Page 39

1 indicated that chemical fertilizer is the primary
2 source of nitrate in groundwater and surface water in
3 areas where nitrate concentration were above background
4 levels. Moreover, the study documented nitrate
5 pollution within the San Jerardo cooperative well was
6 from chemical fertilizer, and also some wells within
7 the Salinas Valley that the nitrate pollution is from
8 recent agricultural discharges and not that of base
9 pollution that occurred decades ago.

10 **MS. DUNHAM:** Can we just clarify that the 2011
11 report is referring to the Lawrence Livermore, which is
12 footage in the record prior to the close of the written
13 comment period in August?

14 **MR. KEELING:** We have the draft of that report
15 prior to August.

16 **MS. DUNHAM:** You have the draft? Was it made
17 publicly available for comment?

18 **MR. YOUNG:** Tess, why don't you come up to the
19 podium and make your comments.

20 **MS. DUNHAM:** Sorry about that. I just was asking
21 for a clarification whether this 2011 report, that he's
22 referring to, was available for review and response to
23 before the close of the written comment period?

24 **MS. McCHESNEY:** So, Matt, was that what you is
25 what you just said is, that there's a draft of the

Page 40

1 report and this information was in the draft of the
2 report and when was that draft report available?

3 **MR. KEELING:** When was it publicly available?

4 **MS. McCHESNEY:** Yes.

5 **MR. KEELING:** I'm not sure, but it was available
6 to us well before August.

7 **MS. DUNHAM:** Yeah, but available to you, but was
8 it available to us?

9 **MR. KEELING:** I believe is.

10 **MS. McCHESNEY:** I believe that it was referenced
11 in the Staff reports during the past three years of
12 this.

13 **MR. KEELING:** Yeah.

14 **MS. DUNHAM:** Well, I --

15 **THE REPORTER:** Excuse me.

16 **MR. KEELING:** It references preliminary is.

17 **THE REPORTER:** Stop. Hang on a second. You need
18 to wait until she finishes talking, please, because I
19 can't get all of you at once. Okay?

20 Can we go with what you said last?

21 **MS. DUNHAM:** Just asking for further clarification
22 as to where and when this draft report was referenced
23 to within, you know, the Staff Report, prior to the
24 close of the written comment period in August?

25 **MR. KEELING:** We referenced the preliminary

Page 41

A6028BD
PANEL HEARING MARCH 14, 2012

1 results with Appendix G in the March 2011 Staff Report.
2 **MS. DUNHAM:** And is the 2011 reference that you're
3 talking about here, the exact same report that was
4 referenced?
5 **MS. McCANN:** Would you like us to look that up and
6 verify that?
7 **MS. DUNHAM:** Yes.
8 **MS. McCHESNEY:** And while you're doing that, why
9 don't we go on, Matt, with the rest of your
10 presentation.
11 **MR. KEELING:** Well, there was another study within
12 the August Groundwater Basin which is in the Morgan
13 Hill Gilroy areas. It documented similar findings with
14 regard to chemical fertilizer, irrigated agriculture
15 being the primary source of nitrate and nitrogen within
16 groundwater, as well as recent discharges from
17 agriculture versus base pollution and we also
18 documented increasing nitrate trends at the time, and
19 these are very technical and highly personal reports,
20 but the bottom line is that they indicate that real
21 people, like the two women that are depicted here from
22 the San Jerardo Cooperative, are affected by nitrate
23 pollution from chemical fertilizer. And the costs
24 associated with dealing with nitrate polluted drinking
25 water is significant, as you can see through some of

Page 42

1 the real cost examples that we have shown here for our
2 region. And as you've heard during previous workshops
3 and presentations, that people who live in
4 disadvantaged communities are typically paying a higher
5 portion of these costs, because they live within,
6 usually within rural agricultural areas and they're
7 more susceptible to nitrate pollution.
8 In some cases, people in these areas are
9 paying for a drinking water supply that's not safe to
10 drink, while also having to pay for bottled water. And
11 this is a reality that the people of San Jerardo lived
12 for several years.
13 As pointed out here, San Jerardo just got a
14 new well at a cost of over \$3 million, but how long is
15 it going to be before their new well is polluted with
16 nitrate? How long is it going to take for them to
17 replace it and at what cost?
18 Our highest priorities are focused on
19 identifying and protecting the most at-risk portions of
20 the population from nitrate pollution, who may not be
21 aware of the risk and/or can't afford clean water. And
22 these include domestic well owners, farm labor camps,
23 schools and local communities within rural agricultural
24 areas, and obviously with an emphasis on disadvantaged
25 communities. We've been focusing on the protection of

Page 43

1 the domestic and municipal beneficial uses of drinking
2 water because of how significant the water quality of
3 public health, along with the costs associated with
4 dealing with it, but we are also responsible for
5 protecting two other beneficial uses of groundwater,
6 which are industrial supply and agricultural supply.
7 Nitrate can also be problematic with certain industrial
8 processes and typically needs to be removed along with
9 other minerals, before use.
10 Data also showed that groundwater in
11 agricultural areas, in some areas, exceeds our water
12 quality objectives and base and plan for irrigation on
13 certain types of crops, like citrus, avocados and
14 grapes, and this is also true for some surface waters
15 in our region.
16 Now, we may be rapidly approaching maximum
17 nitrate thresholds for other high valued crops in our
18 region, given we're in uncharted territory with
19 increasingly high nitrate concentration in
20 groundwater. Nitrate concentration in agricultural
21 areas are also at levels that can be harmful to
22 livestock and other animals. And according to nitrate
23 toxicity guidelines for cattle, there are wells in our
24 region that have nitrate concentrations that are high
25 enough to kill a cow. So we need to be conscious that

Page 44

1 we're not just looking at protecting the drinking water
2 beneficial use, but also the other beneficial uses, to
3 ensure that we have sustainable agricultural and other
4 communities in our region.
5 And that concludes my presentation.
6 **MS. McCANN:** The 2011 Preliminary Report by
7 Lawrence Livermore Lab was referenced in the March 2011
8 Staff Report text, as well as in that Appendix G.
9 **MR. YOUNG:** I didn't pick all that up, Lisa.
10 Was this available to the public?
11 **MS. McCANN:** Yes. Those Staff Reports were made
12 available as part of the Staff Report.
13 **MR. YOUNG:** Okay.
14 **MR. DELGADO:** Mr. Chair, I thought there was a
15 follow-up question about whether what we saw just now
16 was exactly what was in that earlier 2011 Report.
17 Something to that effect.
18 **MR. KEELING:** Yeah, the data didn't change. It's
19 the same information.
20 **MR. YOUNG:** All right. Who's up next?
21 **MR. BRIGGS:** Karen Worcester of our Staff, who is
22 our manager of our Central Coast Regional
23 Monitoring/Basin Planning Program.
24 **MS. WORCESTER:** Yes, good --
25 **THE REPORTER:** Speak up, please.

Page 45

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. WORCESTER:** Good morning, members of the --
2 **THE REPORTER:** I can't hear you.
3 **MS. WORCESTER:** Okay. How's that?
4 **THE REPORTER:** Okay. Thank you.
5 **MS. WORCESTER:** I'm going to be briefly discussing
6 some of the priority water quality issues that Roger
7 mentioned in his introduction in surface waters of our
8 region, focusing on two high priority areas, Santa
9 Maria and Lower Salinas.
10 Um, a State Board Report entitled "Toxicity
11 in California Waters" describes Central Coast streams
12 as having the highest percent of toxic sites
13 statewide. We're looking at a combined data set of
14 information from multiple projects. Over half of the
15 sites in our region were toxic, and almost a quarter of
16 these sites were highly toxic. In particular, Salinas
17 and Santa Maria areas are severely impaired by
18 toxicity. These maps come off of our website, The
19 Central Coast Monitoring Program website. The
20 greyish-blue areas are where irrigated agricultural is
21 located. The brown areas, sort of, see them below the
22 sites here (indicating), this is the Salinas -- is
23 Salinas and Santa Maria. The dots on the map are where
24 we have samples collected, either by our program or by
25 the Property Monitoring Program for Agriculture. Green

Page 46

1 dots have shown no toxicity at all, but you can see in
2 these, in the lower Salinas and lower Santa Maria
3 areas, most of the sites that we have monitored, or
4 that we have data on are highly toxic. These dark red
5 dots are toxic, at least half the time they're sampled,
6 in some cases, always. Just to clarify, toxicity is a
7 measure of effects to a test organism. So we take a
8 sample, take it to the lab, expose the test organism to
9 that water and the organism measures survival. So in
10 these dark red sites, the organisms were dying. One of
11 those sites that we are particularly concerned about is
12 just above this important estuary, Santa Maria River
13 mouth. This location supports several threatened and
14 endangered species, and you could see by the data here,
15 100 percent of the samples that have been collected
16 there for invertebrates in sediment have been toxic,
17 and almost as many have been toxic in water, because of
18 pesticide concentrations. In addition, we are seeing
19 pesticides and spongidicides in fish tissue in this
20 lagoon. They are sport fisherman downstream of this
21 along the beach in this area. In terms of the benefit
22 health, there are no bugs in this system you consider,
23 quote, "trout food," May Flies, Caddis Flies, Storm
24 Flies. In fact, there are none in the lower Salinas
25 area at all -- or, sorry -- Santa Maria area, at all,

Page 47

1 which is one of our primary indicators of health in a
2 stream system. So we consider this system extremely
3 impaired.
4 This is a map of the same area, looking at
5 nitrate concentrations and again similar pattern as to
6 toxicity with widespread violations of our drinking
7 water standard throughout the area. The darkest red
8 dots here, at least half of the samples collected at
9 these sites, have exceeded the drinking water standard,
10 and in most cases, this is by multiple fold. The site
11 circled in pink here, is the same site I just showed
12 you at the Santa Maria Estuary, and you can see the
13 concentration graph at the bottom. The red line is our
14 drinking water standard at 10, here.
15 Um, most EPA and others working on aquatic
16 life issues would consider 1 protective for aquatic
17 life, so it's much lower than the drinking water
18 standard. You can see, we've had concentrations as
19 high as 100 in the site, just above our Estuary,
20 extremely impaired. You can also see, just for
21 reference, the point at which the (inaudible words)
22 agriculture started. So this is a mix of -- for both
23 our program and their program, very similar results in
24 the lower Salinas area.
25 In this case, the site I'm highlighting is,

Page 48

1 the old Salinas River discharges directly into
2 Mass Landing and then waters are taken up into Ojai
3 slue from there, so similar situation where we have
4 poor estuary resources, that some of the highest
5 concentrations in our region are discharging to. This
6 site, again, averaging twice the drinking water
7 standards and exceeding it by multiple folds.
8 At times we're not -- this data is not the
9 first to acknowledge these very high concentrations.
10 This was a report that came out many years ago, in the
11 mid '90s, and this quote from the report stating that
12 the extraordinary high nitrate concentrations in this
13 system, may be the highest recorded in scientific
14 literature for a river or estuary.
15 This data is from the Monterey Bay Aquarium
16 Research Institute. This is a nitrate probe near the
17 Masland Harbor and the old Salinas System, and you can
18 see there, I'm showing similar trends. This is
19 starting in 2004 to the data that we've collected,
20 increasing over time.
21 Okay. In summary, particularly in the Lower
22 Salinas and Santa Maria areas, we're still seeing
23 extremely high nitrate concentration and widespread
24 toxicity. Also, very poor biological health, and most
25 sites are not showing improvement. Although, we are

Page 49

A6028BD
PANEL HEARING MARCH 14, 2012

1 seeing some decreases in loads at some locations,
2 although, the concentrations remain high. But
3 generally, these waters are not healthy for aquatic
4 life and not healthy are not fully recharged for
5 drinkable groundwater.
6 And now Angela Schroeter is going to present
7 the summary of the document.
8 **MR. YOUNG:** Mr. Johnston?
9 **MR. JOHNSTON:** One quick question for Karen.
10 **MR. YOUNG:** It's got to be quick, because I
11 wanted everyone --
12 **MR. JOHNSTON:** Oh, did you want us to wait until
13 the end of --
14 **MR. YOUNG:** Exactly.
15 **MR. JOHNSTON:** Oh, I thought we were waiting for
16 the end of each individual person.
17 **MR. YOUNG:** No, no.
18 **MR. JOHNSTON:** I'll wait.
19 **MR. YOUNG:** This is one presentation.
20 **MR. JOHNSTON:** Okay. I'll wait.
21 **MR. YOUNG:** Thank you.
22 Angela Schroeter.
23 **MS. SCHROETER:** Thank you.
24 So good morning, Chair and members of the
25 Board. Again, my name is Angela Schroeter. I am the

Page 50

1 Senior Engineering Geologist and also the
2 Program manager for the Agriculture Regulatory
3 Program.
4 So as Lisa mentioned, the Water Board
5 received more than 2,000 comment letters from
6 stakeholders throughout the process, over the last
7 three and half years. While every comment is unique,
8 the public comments received consistently focused on a
9 few main issues that the Draft Order should address.
10 The first comment that we have heard from all
11 stakeholders, primarily agriculture, but also
12 environmental stakeholders, is that every farm is
13 unique and has individual unique threat to water
14 quality based on the characteristics of those farms and
15 that the Draft Order should address those
16 characteristics and not be one size fits all.
17 In addition, comments also specified that the
18 Draft Order should focus on the most impaired areas of
19 the region.
20 Comments stated that those farms that are in
21 the unimpaired area of the region should not be subject
22 to the same requirements as those that are the most
23 severely impaired.
24 In addition, we also heard from stakeholders
25 that among the highest priority for this Order should

Page 51

1 be the prioritization of public health and drinking
2 water protection.
3 Finally, we also heard that the job
4 Agricultural Order should build upon the success of the
5 2004 Conditional Waiver.
6 So based upon this input, and the severity of
7 the water quality conditions that you've heard
8 described by Karen Worester and also Matt Keeling,
9 Staff proposed three Tiers, based upon the individual
10 characteristics of the farms, and threat to water
11 quality.
12 Tier 1 are those farms which are the lowest
13 threat to water quality. They are the farms that do
14 not use chlorophyll-a phosphor diazinon, are not in an
15 area where surface water is impaired, or near an
16 impacted drinking water well. And if those farms
17 produce crops that are known to load nitrogen to
18 groundwater, they must be less than 50 acres.
19 In addition, Tier 1 also includes those farms
20 which are certified sustainable, such as a sustainable
21 practice certification, which is conducted by the
22 Central Coast Vineyard team.
23 Tier 2 includes those farms which are a
24 moderate threat to water quality. They are the other
25 farms that use chlorophyll-a phosphor diazinon in our

Page 52

1 apparent surface water area or near an impacted
2 drinking water well.
3 If those farms produced a crop that is of
4 those for higher risk for loading nitrogen, those farms
5 would be between 50 and 500 acres.
6 Tier 3 are those farms which we considered to
7 be the highest threat to water quality. There's two
8 criteria for Tier 3. Those are the farms that use
9 chlorophyll-a phosphor diazinon and discharge to an
10 impaired surface water body as impaired for toxicity or
11 pesticides.
12 The second criteria is if that farm is
13 growing crops for loading nitrogen to groundwater.
14 Those farms are greater than or equal to 500 acres.
15 In response to the comment that the Draft
16 Order should build upon the success of the Conditional
17 Waiver adopted by the Board in 2004, I'll just start by
18 reminding the Board what those conditions were.
19 So 2004 Conditional Waiver stated that
20 discharges must meet water quality standards. They
21 must file and update the Notice of Intent. It must
22 develop and implement a farm plan. Dischargers must
23 also submit an Annual Management Practice Checklist,
24 conduct surface receiving water monitoring, and also
25 comply with education and time schedules.

Page 53

A6028BD
PANEL HEARING MARCH 14, 2012

1 Again, these requirements in black, are those
2 that are part of the 2004 Conditional Waiver, adopted
3 by the Board in 2004, that growers are currently
4 required to comply with.

5 In response to the severe water quality
6 conditions that you've heard about from Matt Keeling,
7 we've also introduced or proposed new requirements to
8 address threat to groundwater. These are shown here in
9 blue: Groundwater monitor reporting, backflow
10 prevention, and proper well abandonment.

11 In addition, Staff is proposing to improve
12 reporting of the Agriculture Order, by adding an annual
13 compliance form that's submitted online. And this
14 annual compliance form would replace the Management
15 Practice Checklist.

16 So these requirements, the black ones that
17 you see here, from that 2004 Conditional Waiver, as
18 well as these new proposed requirements in blue, make
19 up the requirements for the 2012 Draft Order for
20 Tier 2. This is -- are those farms considered to be a
21 moderate threat to water quality.

22 Also recognizing that Tier 1 growers, those
23 are the lower threat to the water quality, should have
24 lesser requirements, Staff is proposing to remove the
25 Annual Compliance Form from the Tier 1 requirements.

Page 54

1 So Tier 1 requirements would have no annual
2 reporting for on farm, with the exception of filing an
3 updated Notice of Intent.

4 In response to the comments that the Draft
5 Order should focus on the areas that are most impaired,
6 and those farms which are in the highest risk, the
7 Draft Order also proposes new requirements for Tier 3
8 farms, for those farms that are the relatively highest
9 threat to water quality.

10 Those new requirements are: Individual
11 Discharge monitoring. Also for subset of Tier 3, which
12 have an increased nitrate loading risk, to develop an
13 Irrigation Treatment Management Plan, which is to
14 achieve certain Nutrient Balance Targets, as well as a
15 subset of Tier 3 farms that are adjacent to a sediment
16 temperature or to an impaired creek, would also have to
17 submit the Water Quality Buffer Plan.

18 So, again, these are the proposed is some of
19 the proposed requirements in the Draft Order. The
20 center is Tier 2, which is the more threat. On the
21 left, you see Tier 1, which is the lower threat, which
22 are the farms that we are proposing to reduce the
23 reporting requirements for, and Tier 3, increased
24 requirements for the higher threat farms.

25 At this point, I also want to point out that

Page 55

1 to address concerns about reporting, the Draft Order
2 specifies that the precise locations of groundwater
3 wells, and any trade secrets, secret processes or other
4 priority information, are protected from public
5 disclosure.

6 I also want to mention, at this point, that
7 Staff recognizes that many growers have already taken
8 proactive action to protect water quality. For
9 example, the Sustainable Practice Certified Vineyard
10 Growers require specific water quality practices. The
11 Avocado Commission has indicated that they encourage
12 current control for the storm water protection. The
13 Cut Flower Industry has indicated that they are
14 reducing the use of chemicals, and the Strawberry
15 Commission has indicated that many growers already meet
16 proposed nutrient balanced targets.

17 Staff commends these growers and wants to
18 ensure that all growers are doing their part to protect
19 water quality.

20 So let's look at the farm's acreage. Tier 1
21 and Tier 2 include the most acreage and farms in the
22 region. And, in fact, Tier 1 includes the most farms
23 in the region, at 55 percent of the region. Tier 3
24 includes the least amount of farms. 3 percent of the
25 farms, have 103 and 51,000 acres. This acreage of

Page 56

1 farms is based upon information submitted by growers in
2 the electronic Notices of Intent.

3 The Draft Order also includes incentives for
4 those growers who can demonstrate efforts to reduce the
5 threat to our quality and implement our water quality
6 improvements.

7 For example, sustainable certifications,
8 being able to transfer to a lower Tier, as well as
9 encouraging cooperative monitoring projects, or I'm
10 sorry, cooperative water quality treatment projects,
11 such as treatment wetlands or management aquatic
12 recharge or other efforts, for example, by a watershed
13 group. These projects could propose alternative
14 monitoring or reporting, as well as alternative time
15 schedules.

16 In addition, the Draft Order also includes
17 flexibility and alternatives. Individuals or groups
18 can request specific Orders for commodity or for a
19 specific individual farming operation. It specifies
20 that third-party groups are acceptable, and also
21 provides the flexibility for dischargers to comply with
22 both surface receiving water monitoring as well as
23 groundwater monitoring, either individually, or as a
24 cooperative effort.

25 The Draft Order also allows growers to comply

Page 57

A6028BD
PANEL HEARING MARCH 14, 2012

1 with groundwater monitoring by submitting existing
2 groundwater data, if it's available.

3 The Draft Order also includes flexibility for
4 growers to evaluate nitrate risk by farm or by unit.
5 For example, if a grower has numerous crop types on a
6 farm, and nitrate loading risk is only high for a
7 particular area, it could evaluate that nitrate loading
8 risk by unit.

9 The Draft Order also includes alternatives to
10 the Tier 2 reporting of how nitrogen applied, the
11 Tier 3 Certified Irrigation Treatment Plan, as well as
12 the Tier 3 Water Quality Buffer Plan.

13 So this, take a closer look at the farms and
14 the tiers. This is a map of the Central Coast
15 Regions. The farms, Tier 1 farms, again, are the
16 lowest relative threat to water quality. They're shown
17 here, blue dots. Notice that Tier 1 farms are located
18 throughout the region. They really are not
19 concentrated in any particular one area.

20 The crop types, Tier 1 farms predominantly
21 include vineyards, also orchards, as well as several
22 crops, both berries, vegetables, and nurseries and
23 greenhouses, but predominantly the crop type in this
24 Tier are the vineyards.

25 Moving on to Tier 2, this is those farms

Page 58

1 which would be considered a moderate threat to water
2 quality. These are shown here in green. So in
3 response to comments that the Draft Order focus on this
4 impaired areas of region, notice that Tier 2 are
5 starting to get a closer focus on the areas where we
6 see the most impairment, as described by Matt Keeling
7 and Karen Worcester, so predominantly in the
8 Salinas Valley as well as the Santa Maria area.

9 In terms of types of farms we see in Tier 2,
10 we see predominantly road crops in Tier 2, for the
11 berries and vegetables. We still also see orchards,
12 nurseries, greenhouses and some vineyards in Tier 2.
13 Again, this is based upon information submitted by
14 growers in the electronic Notice of Intent.

15 So finally, this is a map of the Tier 3
16 farms. They are shown here in red, and now we are
17 focusing, almost exclusively, in the areas where we see
18 the most severe impairment. The Salinas Valley, and
19 also lower parts of Santa Maria. In terms of the types
20 of farms in Tier 3, again, there's only 103 farms so
21 now we can start getting very specific. In this Tier,
22 we see 96 farms that grow road crops, primarily
23 vegetables, but also see just a handful of other farm
24 types, approximately five strawberry farms, one nursery
25 and one greenhouse.

Page 59

1 So this is a summary of the Tier farms
2 again. The Tier 1 in blue, the Tier 2 is in green, and
3 the Tier 3 is in red. Again, 97 percent of the farms
4 are Tier 1 and Tier 2 and 3 percent of the farms are in
5 Tier 3. So let's take a closer look at the Tier 3
6 requirements. This is for the 103 farms in the --
7 actually, it's -- I'm sorry, there's 51,000 acres.

8 The subset, the Tier 3 farms have to conduct
9 individual discharge monitoring, as well as Irrigation
10 Treatment Management Plan, and a Water Quality Buffer
11 Plan. If we look at the subset of the Tier 3 farms
12 that would have to prepare an Irrigation Treatment
13 Management Plan, Staff estimates that about 61 of the
14 103 farms have to prepare Irrigation Treatment
15 Management Plan.

16 Similarly, Staff estimates that approximately
17 58 farms would have to prepare a Water Buffer Plan.
18 And this is based on looking at the information in the
19 electronic Notice of Intent as well as the location of
20 those specific farms. So one of the most significant
21 improvements of the Draft Order is improved monitoring
22 and reporting to evaluate the progress towards water
23 quality improvement and verify the effectiveness of the
24 Order.

25 So what new information is gained? Well,

Page 60

1 from all farms, we get data to identify groundwater
2 impacted by nitrate. Get data to protect drinking
3 water, beneficial uses. We also receive new
4 information on individual pesticides protected surface
5 water. As well as get an identification of farms that
6 are certified sustainable. There are many farms we
7 also get information to identify those that have an
8 increased nitrate loading risk. We get the
9 identification of practices that are implemented, as
10 well as indicators that practices are effective and
11 blue loads reduced. From a few farms, those
12 higher-risk farms, we also get a certification is the
13 certification of Irrigation and Nutrient Land Plans.
14 Data to evaluate the quality of individual discharges,
15 protection of adjacent surface water, and verification
16 of progress and effectiveness, according to specific
17 indicators and milestones.

18 This new information will enable the Water
19 Board to efficiently and effectively evaluate
20 compliance and prioritize farms for appropriate
21 follow-up, based on water quality, and ensure the
22 protection of safe drinking water sources. It will
23 also allow the Water Board to evaluate the
24 effectiveness of the Order. Most importantly, this new
25 information will help us to learn more and adapt as a

Page 61

A6028BD
PANEL HEARING MARCH 14, 2012

1 Board to continuously improve the Order and its
2 implementation.
3 So, in conclusion, the Draft Order is
4 responsive to the input from State Boards. It does
5 address comments that requirements should be based on
6 individual farms and not one size fits all. The Draft
7 Order does focus on the areas of the region that are
8 most impaired. It does include requirements
9 prioritizing the protection of drinking water and
10 groundwater and Draft Order does build on the 2004
11 Conditional Waiver, and maintains similar requirements
12 for a large percentage of growers and reduced the
13 reporting for more than half. It increased
14 requirements for a small percentage of growers
15 exhibiting an increased threat to water quality.
16 The Draft Order complies with the Water Code
17 Plans and Policies and is reasonable, given the
18 severity of water quality conditions and tap and
19 drinking water.
20 And now Michael Thomas will list for you
21 about implementation and reports.
22 **MR. THOMAS:** Good afternoon, Mr. Chair and members
23 of the Board.
24 **THE REPORTER:** I can't hear you.
25 **MR. THOMAS:** How about that?

Page 62

1 **MR. YOUNG:** Hang on one second, Michael. Madam
2 Reporter, can you hear everything okay?
3 **THE REPORTER:** Right now I am, yeah. I'm letting
4 them know when I can't.
5 **MR. YOUNG:** Would you prefer being in a different
6 location?
7 **THE REPORTER:** Maybe after the break, I'll move.
8 Right now, we're good.
9 **MR. YOUNG:** We'll take a break in a bit and if you
10 want to move anywhere, well, just let me know.
11 **THE REPORTER:** Okay. Thanks.
12 **MR. THOMAS:** Good afternoon or good morning,
13 Mr. Chair and members of the Board. I'm going to talk
14 a little bit about enforcement related to this
15 Conditional Waiver of Waste Discharge Requirements, and
16 the Order that is before the Board today.
17 This 2012 Conditional Waiver has
18 administrative type requirements, and that is,
19 enrollment fees and online reporting and submittal due
20 dates and reporting. And Staff can pursue enforcement
21 action for violations of those administrative type
22 actions. And the typical sequence that we would follow
23 is when we find that there is a violation, I usually
24 make a phone call or I send an email, and the majority
25 of violations are resolved at that point, without

Page 63

1 taking further action. If we need to, we'll send a
2 letter to the Discharger, if we can't get a hold of
3 them, otherwise, if the letter does not work, we send a
4 Notice of Violation. Again, the majority of violation
5 issues are resolved at that point. Rarely, do we have
6 to send a notice, Second Notice of Violation or move on
7 to proposed fines. If we do move on to proposed fines,
8 we usually offer a settlement as a fraction of the
9 maximum allowable and the majority of those cases are
10 settled without coming to the Board. But if the
11 Discharger would like to, they can come to the Board
12 and have a hearing before the Board, and that has
13 happened, I think, if I remember correctly, once with
14 respect to 2004 Order, in eight years. And when it
15 does come to the Board, if it comes to the Board, the
16 Board can dismiss the proposal of fines, or they could
17 decrease the proposed amount, or increase.
18 At the last workshop in February, we heard a
19 lot about this fear factor. What about enforcement of
20 Water Quality Standards? When the Order is adopted,
21 will Staff pursue enforcement action immediately
22 against growers for violation of Water Quality
23 Standards? The answer to that is no, period. The
24 permits, the Draft permit states in Attachment A,
25 Page 2, "The Central Coast Water Board recognizes

Page 64

1 that dischargers may not achieve immediate
2 compliance with all the requirements. Thus
3 this Order provides reasonable schedules for
4 discharge to reach full compliance, over
5 many years, by implementing management
6 practices and monitoring and reporting
7 programs that demonstrate and verify
8 measurable progress annually."
9 And that's a quote.
10 So what does it look like, if we obviously
11 want growers to eventually achieve water quality
12 standards? What's that look like? It's a difficult
13 process. The growers have to implement management
14 practices, monitor and report effectiveness to the
15 Board, and then adjust, based on those results, and
16 then keep improving those management practices and
17 eventually achieve the water quality. It is possible
18 that some growers will not do anything, will do little
19 or no implementation. They believe that the Water
20 Board doesn't have authority to regulate them, so they
21 will choose not to. And in that case, we will pursue a
22 different avenue, and that is Waste Discharge
23 Requirements. Waste Discharge Requirements is a
24 different kind of Order, and so if growers are not
25 complying with this Conditional Waiver, we would

Page 65

A6028BD
PANEL HEARING MARCH 14, 2012

1 consider Waste Discharge Requirement. Waste Discharge
2 Requirements often do have Water Quality Standards in
3 them, and they are enforceable. And there are cases
4 right now that we are considering for pursuing Waste
5 Discharge Requirements. We are not working on those,
6 because we have been working on this Order continuously
7 for three and a half years.

8 **MR. YOUNG:** Well, can you just quickly clarify,
9 what do you mean cases? Agricultural --

10 **MR. THOMAS:** Yes.

11 **MR. YOUNG:** -- cases?

12 **MR. THOMAS:** There are cases where operations that
13 are not complying with the existing Order, in our
14 opinion, and I can't go into details about it, because
15 it could be a pending action before the Board. But
16 there are such cases and we will pursue these.

17 We need to move from the condition on the
18 left here, which is not protected with benefits for
19 uses, which is causing the kind of pollutions that we
20 have heard about extensively today, and in every
21 previous workshop and hearing that we've had. We need
22 to move for the conditions on the right. There are
23 solutions available and we can do this.

24 You've heard that people or growers are
25 worried about complying with water quality objectives

Page 66

1 as long as the record is adopted. I just explained
2 that that is not the case. We will not be taking
3 forcible action on Water Quality Objectives, but what
4 we talk about internally is not how we are going to
5 enforce Water Quality Objectives. What we talk about
6 is the best defense for growers is a good offense.
7 What they need to be doing is demonstrating the
8 implementation of practices, and providing the
9 information that verifies the effectiveness of those
10 practices. That is, by far, the best defense that they
11 could possibly have.

12 Again, these programs are available. There
13 are places in our region that this Board has spent is
14 not spent, allocated tens of millions of dollars
15 towards projects to demonstrate that there are
16 practices available, and that they work.

17 There are also Ag developed programs, like
18 the sustainability and practice certification. We
19 didn't develop this. The Ag industry did. The
20 standards or Sustainability In Practice are, they look
21 at the farm in its entirety and they consider the
22 orchards, soil fertility, cover crop, wildlife, native
23 plants, and irrigation, and they look at the whole
24 system.

25 Operations that are SIP Certified are

Page 67

1 automatically in Tier 1. And the Ag industry, other
2 segments of the Ag industry are free to pursue and
3 develop these kinds of programs and this Order, this
4 Draft Order, encourages them to do so.

5 Briefly, I want to mention the amount of
6 resources that we've allocated to this effort. All of
7 the people listed here have been working on this
8 project over the past three and a half years now.
9 Those that are listed in bold, at the beginning, have
10 been spending almost 100 percent of their time on this
11 project. It does not include Executive Officers, and
12 Assistant Executive Officers or Board time. We have
13 spent more time on this project, than any other project
14 on the Board, and we are tying up resources and not
15 doing other things that we should be doing, that we are
16 responsible for doing. That includes implementation of
17 the Ag Program.

18 The Board adopted an Order in 2004, and we
19 are not implementing the things that we need to
20 implement to deal with the severe water quality
21 pollution problem, because we are spending time on
22 bringing this forward to the Board again and again, in
23 workshops and hearings.

24 We are not taking action on Public Health
25 Protection. There are drinking water problems that we

Page 68

1 need to be addressed. We have identified several. We
2 know there are several more. We need to be taking
3 action on this, and we haven't been doing it because
4 our resources are tied up on this delay.

5 There are also total maximum daily load
6 reports that we are required to do by law. These
7 Orders, many of these Orders, address the most severe
8 agricultural water quality pollution issues and they
9 rely on this Order. They refer to this Order and they
10 rely on this Order for implementation. We need to get
11 this Order adopted because it affects many other things
12 that we do.

13 We're also planning to bring basic plan
14 amendments to the Board. Our basic plan describes the
15 water quality conditions in our regions, and our
16 resources, and the programs are in place to address the
17 most severe problems. We have major basic plan
18 amendments that we need to bring before this Board, and
19 we're not.

20 The Water Board's mission, as a reminder, is
21 preserve, enhance, and restore the quality of
22 California Water Resources, for the benefit of the
23 present and future generations. We're not doing it.

24 These conditions do not protect resources for
25 this generation or future generations. Water quality

Page 69

A6028BD
PANEL HEARING MARCH 14, 2012

1 data that you have seen, that have been brought to you
2 multiple times, that can be established in the record
3 and in the literature, demonstrates the severity of the
4 water pollution problems in our regions, and the number
5 of people that are affected, and public health, which
6 is extraordinary. We need to move from the condition
7 on the left to the condition on the right.
8 The State Water Board has an Environmental
9 Justice Policy, and the number one goal listed is
10 integrate Environmental Justice Consideration into the
11 development, adoption, implementation, and enforcement
12 of the Board's decisions, regulations, and policies.
13 We are not doing this.
14 Sonia Lopez. This is a picture of
15 Sonia Lopez, and her son, Leonardo, from that
16 San Jerardo area. They're affected by the pollution,
17 groundwater pollution, and the extraordinary costs that
18 are being incurred by that community. She said it
19 better than anyone, "Our problem is going to be
20 your problem. It's everyone's problem. There
21 are solutions, but we need the people in charge
22 of our communities to do something about it."
23 That's us.
24 The Water Board is the only agency with the
25 authority and the responsibility to address this water

Page 70

1 quality problem. Porter-Cologne Water Quality Act
2 says, "The Board must be prepared to exercise its
3 full power and jurisdiction to protect the
4 quality of waters in the state from
5 degradation."
6 We are not doing this.
7 As Matt pointed out earlier, this quote from
8 The Health and Safety Code: "Every citizen of
9 California has a right to pure and sanitary
10 water."
11 We have been arguing about this for three and
12 a half years. We have been meeting with people who
13 tell us it's not true, that the public does not have a
14 right to clean water. We have an obligation to clean
15 it up if they want to use it. It's not true. They do
16 have a right to clean water. It's our job, as the
17 Water Board and Water Board Staff, to try to provide
18 that, and to protect them. We're not doing it.
19 In conclusion, the Water Quality Degradation
20 is severe, and it's getting worse. The more data we
21 get, the worse it looks. The threat to public health
22 is paramount. We must act now to comply with our laws,
23 our plans, and our policies to do what is required of
24 us. We cannot negotiate away protection of public
25 health and public resources. We often hear that we

Page 71

1 should delay and continue to negotiate. If we just
2 negotiate a little while longer, perhaps we can resolve
3 this. Resolving this is dealing with the public health
4 threat and the pollution problem. It is not
5 negotiating away protection of public health or public
6 resources.
7 The California Constitution has a Public
8 Trust Doctrine Policy and we are responsible for
9 protecting the public trust and implementing that
10 Doctrine. Delay prevents implementation and action on
11 our priority cases, as I have already mentioned. It's
12 a real delay. It's a real delay of these other
13 priority actions that we are supposed to be acting on.
14 An unwillingness to submit data or specified
15 information is not a reason for delay. All of the
16 other parties that this Board regulates, they all
17 submit information to this Board. That is public
18 information. An unwillingness to submit information to
19 demonstrate a reduction in the pollution load is not a
20 reason to delay. The solutions are available. This
21 Board has allocated, as I have said, tens of millions
22 of dollars to demonstrate those solutions. They're out
23 there, and they can be implemented.
24 That concludes my (inaudible word).
25 **MR. YOUNG:** Okay. Thank you, Mr. Thomas.

Page 72

1 For the rest of you, we are going to take a
2 break some time before noon. I know Congressman Farr
3 has to -- is it leave by noon? Okay. Um, we can go on
4 to our own questions of Staff now or we can take a
5 ten-minute break right now.
6 **MR. DELGADO:** I just have a very brief question.
7 On the packet, there's an irrigation slide that we did
8 not see. Do you want to do that now or later?
9 **MR. KEELING:** We will go back, and when all of the
10 other presentations are made, and the Executive Officer
11 will make a recommendation.
12 **MR. YOUNG:** You guys want to take a break? You
13 do? Okay. So folks, ten minutes, we'll come back.
14 Believe it or not, at 11:20, I'm going to start
15 speaking and asking you to take your seats.
16 (Brief recess.)
17 **MR. YOUNG:** Any questions of Staff? I wanted to
18 give Congressman Farr the opportunity to approach the
19 Board and give us his comments and then, Mr. Sanchez,
20 you had also requested time. And I will invite, if any
21 of our other elective representatives would like to
22 come up to immediately follow Mr. Sanchez. If you wish
23 to speak now, that will be fine. If you want to wait
24 until later, that's also okay. I'll leave it up to
25 you.

Page 73

A6028BD
PANEL HEARING MARCH 14, 2012

1 Congressman.
2 **MR. FARR:** Thank you very much, Chairman Young,
3 and thank you, members of the Board. Thank you for
4 your public service.
5 My name is Sam Farr. I'm a member of
6 Congress and I represent Monterey, Santa Cruz and San
7 Benito in the 17th Congressional District. One of my
8 roles, in Congress, is to serve as the ranking member
9 on the Ag Appropriations Committee. That's the
10 committee that funds all of the Department of
11 Agriculture and the FDA. And in that role, I've heard
12 every single issue there is about Agriculture in
13 America. In particular, the interest now in water
14 quality in other States. Big huge problems in the
15 Mississippi Delta, Mississippi River Basin,
16 Chesapeake Bay. One of the things I've seen in my
17 public service of being a County Supervisor, a State
18 Assembly member, a member of Congress since in public
19 office since 1975, is that what we really have here in
20 Central Coast, not only incredible amount of
21 agriculture that is feeding its nations, about 70
22 percent of all the fresh fruits and vegetables in the
23 world, let alone, the United States come from here.
24 And it's a huge, huge economic engine. But it only
25 works, when we work together. And I brag about the

Page 74

1 fact that we, here in the Central Coast, we've been
2 able to come up with solutions. Like the is it's
3 mentioned by the Staff, the Central Coast Vineyard
4 Team. The Leafy Green Marketing Order, which,
5 essentially, was all private sector driven, came up
6 overnight, incredible enforcement program on, you know,
7 quality, on health quality of leafy greens. The
8 Waiver, when we first started that, it was all
9 voluntary, and it ended up being nine counties wide.
10 The program was the first flush in studying all the
11 streams and all the other additional programs that have
12 worked very successfully, that the Staff just
13 mentioned.
14 Nitrate contamination is a huge problem.
15 It's a serious problem. But, remember, the Salinas
16 Valley was first farmed by dairies. Hundreds of
17 dairies, wall-to-wall dairy products. That dates back
18 160 years. There's been a lot of build-up since then,
19 and I remember this discussion when I was on the Board
20 of Supervisors in Monterey County in the 1970s. It's a
21 problem that's going to take, as Staff has suggested,
22 it's going to take, and the reports that you've just
23 seen, the Davis Report and the Huertos Report, it takes
24 good science to know where the problem is, and it takes
25 a technical way to clean it up. Your Board member,

Page 75

1 Bruce Delgado, really knows that system from Fort Ord,
2 because we had contaminates in the groundwater there.
3 We had a pumping and we'd clean up the water and
4 recharge it and it's going to probably take 20 or 30
5 years to clean up that phosphor.
6 We also had huge problems with unexploding
7 ordinances, and haven't been able to solve those at the
8 moment, and I really felt the Board's or the Staff's
9 passion in telling you, you know, we got to get this
10 done, but frankly, this isn't a Staff driven project.
11 You're the political responsibility to listen to the
12 public and get it done and we've got to get it done in
13 a collaboration. I mean, as pointed out, it only will
14 work, all this contamination in your mandate, your
15 mandate, it seems to me is the mandate about
16 restoring. I saw that in your responsibilities
17 regarding water quality, but also restoring. And this
18 can't be done overnight. It can't be done at all
19 without the landowners and the growers on that land.
20 They have got to be part of this solution. And all
21 I've learned in my life of politics, and certainly
22 being a father and grandfather, is there are no
23 absolutes. We can work down and work it out. And my
24 coming down here today was just to urge you to take
25 whatever time you need to get this, so that it will

Page 76

1 work. It's not going work in a penalistic way. Leafy
2 Green Marking Order is a great example of a thorough is
3 through examination reporting. All voluntary. But
4 that, now, is the model to the whole nation. And you
5 ought to see the push back from other states. Oh, we
6 can't do that. And the industry came up with that. In
7 fact, the industry came before our committee and said,
8 "Please regulate us. We'll give you some suggestions."
9 And now we hope that that will become a National
10 Order. We can do it here. We have the capability. We
11 have the wherewithal, and the growers that are sitting
12 behind me and others in our environmental community and
13 I just know the only time these things actually work is
14 when you use a carrot and a stick. But in this case,
15 restoration is going to take some time, and a lot of
16 carrots. It's going to take cooperation of the
17 farmers. And I urge whatever Order you come up with,
18 that it works for them.
19 Thank you very much.
20 **MR. YOUNG:** Thank you for your comments.
21 Mayor Delgado.
22 **MR. DELGADO:** Yeah. Can I ask you a couple
23 questions, Sam?
24 **MR. FARR:** I don't know. In my business, you have
25 to ask the Chair if you can ask me some questions.

Page 77

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. DELGADO:** I did that already.
2 **MR. YOUNG:** Yeah, he did. But please refer to him
3 as Congressman Farr, sir.
4 **MR. FARR:** No, you can drop all that.
5 **MR. DELGADO:** Sam, you mentioned the legacy of
6 decades of land use leading up to today. And I don't
7 know if you were here earlier, but were you here when
8 you heard the 2011 Lawrence Livermore Study cited,
9 saying that the pollution is legacy, as you mentioned,
10 and also recent, as the contamination levels they are
11 finding are in part due to ongoing land use, in
12 addition to the legacy. I'm just wondering if you
13 caught that.
14 **MR. FARR:** Yes. And, in fact, looking at the
15 Davis Report and the Executive Summary is it looks like
16 I tore that page out and didn't bring it in is but I
17 remember that of the last recommendations on that, the
18 ninth one talks about is here it is. One of the
19 problems is inconsistency and inaccessibility of data
20 prevent an effective and continuous assessment. A
21 statewide effort is needed to integrate diverse water
22 related data collection activities by many state and
23 local agencies. Many of the issues that were shown by
24 Staff of requiring plans and submission of data is done
25 also by Leafy Green Marketing Order, done by different

Page 78

1 entities that is the Vineyards is Sustainable Vineyards
2 project Organic Standards Project and on and on and I
3 think that there's, there's a lot of successes out
4 there that seems to be less penalistic than this one.
5 And I'm not a grower, and, you know, part of it is
6 that is sustainability. That's what we talked about.
7 We all want that. It's an easy word to use. It's a
8 hard word to implement. But the reality is, if indeed
9 we want to sustain fresh nutritious agriculture, which
10 is what we're supposed to be eating in this country.
11 Part of our health care problems is to, you know is I
12 say, the farmers are the first responders to this new
13 health care plan, because the health care plan assumes
14 that Americans will grow up healthy. Water quality is
15 a big issue, but if we don't sustain these growers in
16 some cost effective way, through regulation, we're
17 going to lose them. I think that would be is I mean,
18 we grew up with agriculture. I think we take so much
19 for granted. Sometimes you have to get out of this
20 system realizing how big it is. You know, California
21 is still the number one Ag state. Nobody else in the
22 United States believes that. They don't think
23 California is an Ag state. You know, we grow about 200
24 crops in this state that no other state grows. We're
25 the only producer of almonds. We're the only producer,

Page 79

1 I think, of walnuts in the United States. So there's
2 huge, huge crops and big international markets. China
3 is running out of land. The future is to grow in
4 California, if you can afford to be in agriculture. So
5 all this regulatory process, as you know, is in balance
6 with how do you make it work, and my suggestion, and I
7 don't know all the specifics of it, but it seems to me
8 that agriculture isn't trying to deny there's a
9 problem. They're trying, you know, they're working
10 with you to try to figure out, how do we get a workable
11 solution so we can both win.
12 **MR. DELGADO:** Sam, Congressman Farr, when you
13 mention that it's we don't want to be too penalistic,
14 are there any examples of the kinds of penalties that
15 you think are the problem, or by penalistic, are you
16 suggesting that the whole process is so onerous that
17 it's sort of a -- it's a surrogate for a penalty, even
18 though -- or are you actually worried about actual
19 penalties.
20 **MR. FARR:** No, it's the onerous part of it. It
21 seems to me, there's more stick than carrot.
22 **MR. DELGADO:** All right.
23 **MR. FARR:** And I think it's going to work when you
24 get more carrot.
25 **MR. DELGADO:** Okay. And I --

Page 80

1 **MR. FARR:** And the Waiver, you've been giving all
2 these years, has been phenomenal. Remember, that all
3 started off voluntarily. That was not something that
4 the Board came up with and said you got to do this.
5 The regulations were out there and they said here's how
6 we can do it. We'll need some waivers, in order to do
7 it, but we're working on it. So I think you've had a
8 history, that it's a very cooperative effort. It's
9 successful.
10 **MR. DELGADO:** Thanks. My last question, and I
11 know your time is valuable, last year in February, you
12 sent a very thorough letter to our Board -- I wasn't
13 here then -- and a couple months later, in April, the
14 Board Staff responded to your letter and that back and
15 forth communication, including some of the concerns
16 that you mentioned today, and it also included some
17 others that you didn't mention today, probably because
18 you're not going to repeat everything you said a year
19 ago, but my question is, since I thought that the
20 response to your letter was a pretty good response, I'm
21 wondering if, since then, if your Staff decided to
22 engage or not engage in further discussions, since you
23 got the response?
24 **MR. FARR:** I'm not sure I understand the
25 question.

Page 81

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. DELGADO:** That you had some concerns expressed
2 last year, and then there was a response to those
3 concerns. Since then, has there been any discussion or
4 desire for discussion?
5 **MR. FARR:** Yes. I think, frankly, the work that
6 the Staff has been doing with the community has been
7 very progressive. It's been a work in progress. I
8 think the frustration now is this, sort of, mandate
9 that we got to do it now. I mean, the Staff works for
10 you, not the other way around. And it's your decision,
11 is this good enough to be adopted? When you have that
12 feeling, and it will work. The bottom line here is not
13 coming up with a regulatory system, it's coming up with
14 a process that will work. That's -- that may take more
15 time. It may take tweaking. I think there's been some
16 good progress made, and I'm not sure that today is.
17 That's all. This is not your final day.
18 **MR. DELGADO:** Thank you very much.
19 **MR. YOUNG:** Congressman, I guess some of them are
20 not done with you yet.
21 Mr. Johnston.
22 **MR. FARR:** This is what happens when you're
23 responsible for a hundred billion dollars of your
24 taxpayer's money.
25 **MR. YOUNG:** Did you bring a bag with you today?

Page 82

1 **MR. FARR:** No. You usually have to ask me for
2 it.
3 **MR. JOHNSTON:** You brought the checkbook, right,
4 Congressman? Um, look, Congressman Farr, I -- while I
5 very much understand Staff's frustration with the fact
6 that resources have been diverted for a long time on
7 this, it's been a very difficult process, and I, as
8 much as anyone, want to get this resolved.
9 I agree with you, we should approve it when
10 we have the right Order. I guess my concern is, and I
11 agree with you, frankly, that to the extent that we can
12 promote collaboration, it's better. My concern is, as
13 I've been trying to review a two-foot tall stack of
14 records from the last four years, and going back and
15 forth with our legal counsel, what I'm hearing and what
16 I'm seeing is that some elements of -- of what Ag is
17 proposing appear to be nonnegotiable. Elements that
18 involve withholding virtually all information about
19 what's actually being done in terms of management
20 practices from the Board, no real way that the Board
21 can participate in a feedback mechanism to figure out
22 what's working, and what isn't, and to understand that,
23 and to understand who's implementing, and who isn't --
24 **MR. FARR:** Could I respond to that?
25 **MR. JOHNSTON:** -- and no way for individual

Page 83

1 dischargers to be accountable, what I'm being told by
2 legal staff, and -- or what we're being told by legal
3 staff is that those are violative of the law. And I
4 got my law degree at K-Mart. I mean, I'm not in much
5 position to argue those questions, unless it's -- I
6 understand they're legal opinions, legal advice, but
7 still, it's pretty high bar for us, as a Board, to say
8 we disagree with that. So I just want to make it
9 clear, I mean, our problem is that it does no good to
10 say, or at least my view of our problem, it does no
11 good to say, let's give a bunch of additional time to
12 negotiate, if there are fundamental issues that appear
13 to be nonnegotiable in terms of Ag's view, as far as
14 what they're willing to do, and in terms of law, as far
15 as what it requires. So I'm looking for some help
16 here. I'd like to hear it.
17 **MR. FARR:** Well, I always believe there's never --
18 nothing that's -- you're a labor leader -- there is
19 nothing that's nonnegotiable. There are standard
20 practices in what is priority information and how to
21 handle that. There's lots of requirements in law for
22 proprietary information to be filed, and you just have
23 to make sure that whatever standards -- I think, what
24 the concerns I hear is more that the paperwork it takes
25 to do, that is just so onerous. It's not sort of --

Page 84

1 you know, we're are not the -- they're not CPAs,
2 they're growers. And, uh, how do you make a project
3 that allows them to be cost effective in growing
4 things, rather than just having to be paper managers.
5 And I don't know the answer. There is a way. There's,
6 there's -- but I always go to, and I think this whole
7 issue is about what are the best management practices?
8 You're in a new frontier. If there was some place in
9 the United States that had solved this problem, you
10 would be looking at it for models and for history. But
11 you're -- you're the first instance here. You're the
12 first responders. Now, how do we deal with that
13 groundwater contamination, a very serious problem? And
14 I think you just have to make sure that you can get it
15 as good as you possibly get. It's never perfect.
16 That's why you have amending process that comes back.
17 And now is the time to really try to make sure if
18 you're going to do this for the first time out, that
19 you have a collaboration because you would admit and
20 say that the only way it could be solved is if the
21 people who are applying nitrates, or monitoring water,
22 or applying water, or own the land where it's been
23 contaminated for 100 years, how do you get that cleaned
24 up? You've got to have their cooperation, it seems to
25 me. Put out those objectives that you want to achieve

Page 85

A6028BD
PANEL HEARING MARCH 14, 2012

1 and get their suggestions on how to solve them.
2 **MR. JOHNSTON:** Well, maybe, we'll hear today that
3 some stuff that we think is not negotiable is
4 negotiable. I haven't heard it yet.
5 **MR. YOUNG:** Okay.
6 Mr. Jeffries.
7 **MR. JEFFRIES:** Thank you. And I can call him Sam
8 because I know him. I've known Sam --
9 **MR. FARR:** And I'll call you Mr. Mayor.
10 **MR. JEFFRIES:** We did the political stuff a couple
11 years ago. But I'll make my question very short to
12 you.
13 Is it your fear that -- and I agree with you,
14 we need to offer more carrots than sticks -- and I
15 think I'm the only Board member who was here when we
16 developed the 2004 Order, except you, Mr. Chairman.
17 That's why you're chairing. I did a lousy job in
18 2004. But it was worth -- it was the environmental
19 group. It was the agriculture group and it was the
20 Staff that worked together and drove to complete the
21 2004 Order.
22 **MR. FARR:** Um-hmm.
23 **MR. JEFFRIES:** And you said that -- through the
24 response of Mr. Johnston -- that there was a lot of
25 people that worked together and a lot of people looked

Page 86

1 at us, at that particular time, because we were able to
2 achieve that Order, and it wasn't something that we hit
3 them over the head to make it happen.
4 My question to you is your fear that if we
5 overregulate the Ag culture community, and it's a very
6 important economic business within the state, and
7 especially in Monterey County, and all the counties in
8 this area, that it will stymie the Ag culture community
9 and leave the State of California, or even leave the
10 United States?
11 **MR. FARR:** Well, I don't think this alone will
12 drive that, but it's -- there's a lot of issues.
13 There's accessibility of labor here. As my grower
14 friends tell me, there's no labor problems in Mexico.
15 We can go there without having any shortage of labor.
16 Mr. Meyers moved his tomato operation to Mexico, and he
17 told me, at one time, he had 70,000 employees. Those
18 70,000 could be here in the Central Coast. For
19 whatever reason, he chose to go to Mexico. So it's
20 just -- it's a cumulative of issues. And obviously,
21 you know, we get better, higher quality in California,
22 and we got a micro climate that you're not going to
23 have a lot of states being able to grow these
24 products. But you're in a world competitive market and
25 everybody wants to grow value-added crops. We have a

Page 87

1 provision in Federal Law, if you're in the commodities
2 business, you're receiving some subsidies from that
3 Federal Government, you're not allowed to go out and
4 grow a specialty crop because you would have -- you
5 have this safety net, this insurance. Well, I'll
6 harvest my wheat or my cotton or my rice and just try
7 the fresh agriculture on the side. I'll try to grow
8 strawberries. We can't do that. We prohibit you
9 that. You either have to go into agriculture without
10 any subsidies or stay in the commodities program.
11 Remember, commodities can all be stored in
12 silos. That's the reason you have the commodities
13 program anywhere. You store cotton, you store wheat,
14 you store beans, you store rice, and so what happens is
15 that the people who were storing those crops told the
16 farmers, we don't need your crop this year. We have
17 enough from last year. So they had -- so we were
18 trying -- it was, you know, a food safety issue. How
19 do we ensure that we'll have farmers there on the land,
20 so we subsidized in the commodity programs. We don't
21 have that in agriculture. This is huge competition,
22 huge competition. So everything that goes into it is a
23 cost, and it's not just water quality. You want to --
24 I think what I'm trying to say, Mr. Jeffries, is that
25 look at the success we built on. That was voluntary.

Page 88

1 Because one stated, here's the problem, and we've got
2 to solve it.
3 Will you come up with -- your -- will you
4 organize among the growers and meet these goals, these
5 standards, that you've created, the Board created? And
6 they did. In fact, all these other counties that were
7 skeptical at first, joined. They looked at Monterey
8 County and said, "It's working. They're not coming
9 out and arresting us. They're not fining us.
10 We're not going to jail. We'll get into this
11 program."
12 The only reason I'm here today -- I want to
13 continue that success.
14 **MR. YOUNG:** Dr. Hunter.
15 **DR. HUNTER:** Congressman Farr, and I really do
16 appreciate having your time today, and your prospective
17 on these issues. And while I fully, fully appreciate
18 the economic issues at stake, I would really appreciate
19 hearing from you regarding the other dimension of this,
20 which weighs heavily before the Board, in terms of the
21 decisions we have to make. And that concerns the
22 health impacts of contaminated groundwater, and
23 especially considering that we have more information
24 now about where these sites are, and relative to
25 disadvantaged, low income communities, and in many

Page 89

A6028BD
PANEL HEARING MARCH 14, 2012

1 cases, people relying on drinking water, private small
2 drinking water, domestic wells, they're not even aware
3 that they may be drinking contaminated water, because
4 we have no information. We have elders. We have
5 children. We have mothers. And these people are now,
6 have recently, in the last year to two years, joined
7 this discussion and brought these issues into full
8 detail for us. And so my concern -- how do we find the
9 balance in implementing changes that are going to have
10 effects that we need to see to ensure that people are
11 drinking safe water?

12 So please help me understand how -- where can
13 we find that path to assure that we are protecting
14 those with the least ability to speak in this room?

15 **MR. FARR:** Well, I've had the pleasure, when I was
16 the County Supervisor, sitting on the California
17 Coastal Commission Air Resources Board, The Waste Water
18 Board, um, which was our reclamation project, and some
19 other Regional Environmental Monitoring Boards. I
20 also, as my first job on the Board, had the pleasure of
21 dedicating a remarkable farm housing unit, an old farm
22 labor camp called San Jerardo. Jerardo had awful
23 water, it's contaminated. And it's taken, until, I
24 think, just these last few years, to find a process to
25 clean it up.

Page 90

1 So the response to your question is yes,
2 they're incredibly serious. What we ought to be
3 doing is setting goals, objectives, and being able to
4 use our grant process and our funding process to make
5 sure that the project to clean up those individual
6 wells, in rural areas, I mean, big commercial people
7 can do it, in the urban area. That's part of their
8 rate. But these -- Monterey County has more mutual
9 water companies and water purveyors than any other
10 county in the United States. They have to meet the
11 National Water Quality Standard, which California has
12 implemented. So I think that you have, in that law,
13 ways of addressing goals and objectives to address it.
14 Nitrate is going to have to be cleaned up. It's going
15 to have to be extracted from the water, and that's
16 going to take very expensive, filtering processes and
17 other science that I'm not aware of. But you have some
18 suggestions here, the Los Huertos Report, and I think
19 this Davis Report speaks to some ideas of how that can
20 be done.

21 **DR. HUNTER:** Thank you.

22 **MR. YOUNG:** Okay. Thank you.

23 And, Congressman, just let me say, on behalf
24 of the Board, I don't think any of us suffer from an
25 illusion that we're going to see immediate results.

Page 91

1 As to the legacy problems, we know they're
2 there. They've been building up for decades. This is
3 going to take time. None of us is going to expect
4 immediate change in water quality data. This is a
5 long-term process. We're aware of that. Nothing is
6 probably going to show up in the next -- in this permit
7 cycle, except the BMPs will get implemented and, in
8 time, we would hope to see improvements to water
9 quality, but we're not sitting here thinking, boom, in
10 five years we better see, you know, that kind of
11 improvement. We know it's going to take a long time.

12 **MR. FARR:** Well, I appreciate the role you have to
13 play. It's a tough role. You've been appointed to
14 have this awesome responsibility. I wish you well. As
15 I said, it's the first instance and the nation will be
16 watching you, so I hope you can get it right.

17 **MR. YOUNG:** Thank you for your comments.

18 Okay. Mr. Sanchez.

19 **MR. SANCHEZ:** Good morning.

20 Thank you very much for the courtesy for
21 allowing us the opportunity to address you. I know you
22 have a long day, so we really appreciate that.

23 My name is Sergio Sanchez. I am the District
24 Director for Assemblyman Raul Luis Alejo. He
25 represents over half a million people in the counties

Page 92

1 of Monterey, San Benito, Santa Clara and Santa Cruz
2 County. A good majority of them farm workers; a good
3 majority of them farmers. This is definitely an issue
4 we are concerned about, and with your permission and
5 indulgence, I'd like to read you some of his comments,
6 and share some additional information with you.

7 This is a letter addressed to you,
8 Mr. Young.

9 "Chairman Young, thank you for the
10 opportunity to address you one more time
11 before you make the decision on the Ag
12 Waiver.

13 "In my previous communications to you,
14 I have shared my concerns regarding the
15 proposed regulations, it's impact in our
16 region's agricultural industry, but I'm
17 especially concerned about the impact to
18 small farmers and their future should
19 this regulation be approved, as proposed."

20 Specifically, Assemblyman Alejo, myself,
21 and other staff, have met with small farmers, and all
22 kinds of farmers -- "and the biggest fear" is and I'm
23 going to share a little bit of a comment from one of
24 them, that said, "In the days when I used to
25 be a farm worker, and I was undocumented,

Page 93

A6028BD
PANEL HEARING MARCH 14, 2012

1 working in this area, I feared being picked
2 up by the immigration" is what we call "Migra" is
3 "and it's just, I always knew where I was
4 going to end up. I was going to end up
5 back in Mexico and I knew how I could
6 come back. So my fear was short term.
7 That fear compared to my fear now, as
8 a farmer, that I could eventually lose
9 my farm, and not know where the decisions
10 are going to take me. That's the biggest
11 fear that I've faced, because I don't know
12 where I'm going to go. I don't know when
13 I'm going to return, and I don't know how
14 I'm going to get back."
15 And that's just directly from one other
16 comment. What Staff fails to address, and to inform
17 you of is the impact on those folks that are sitting on
18 the Tier 2 and Tier 3, that are going to be the most
19 impacted. And that is the small farmer. That is the
20 farm worker that made it. Now he's got a little piece
21 of land or bigger and now he's an employer, and now
22 he's an entrepreneur and trying to make ends meet.
23 What Staff fails to address is that sometimes
24 language is a barrier, technology is a barrier. I
25 think the small farmer -- the bigger farmer is going to

Page 94

1 be able to deal with a lot of this stuff, and they're
2 the ones -- possibly not in this situation, but the
3 small farmer is the one that is already on Tier 3 and
4 is going to be devastated by not -- I mean, just the
5 fear of filling out all of that paperwork online is
6 causing tremendous chaos within that community. That
7 becomes a real issue, and those are the folks that your
8 Staff has failed to inform you. Because they have not
9 shared the communication with them. They have not
10 talked to them, at length, to figure out their fears
11 and figure out how they're going to address their
12 concerns, because literally, what they're saying should
13 the regulations go as proposed, they're going to be
14 wiped out. They're going to close their farms and
15 they're gonna do exactly what Congressman Farr
16 thought. They're going to move down south, in Mexico,
17 and start their farms, because there is a little bit
18 more flexibility there.
19 My final thoughts and concerns remain the
20 same. I appreciate the changes to the proposed,
21 regulations your Staff has suggested is as suggested by
22 concerned parties, but the regulations, as proposed,
23 will impact agriculture significantly. Our region
24 already faces many challenges, and even the remote
25 possibility of the loss of agriculture job is

Page 95

1 unthinkable. I have also shared with you my support
2 for the coalition by the agriculture representatives
3 and also by the Los Huertos Study Report. I truly
4 believe this approach is the most beneficial to the
5 environment and our region's water quality. It really
6 addresses the issue of water quality. This approach
7 allows for a collaborative effort among farmers,
8 environmental advocates, and research community. As a
9 region, we must do more than just monitor water, but
10 rather learn and apply new innovative practices that
11 truly improve water quality.
12 This approach is also the most recent and
13 economical for all. The need for technical staff to
14 monitor water quality and runoff, as proposed by Staff,
15 is unreasonable due to the lack of available technical
16 staff to manage such a huge program. The coalition
17 approach allows a different way to what the Board wants
18 to do, which is to improve water quality, but in a
19 reasonable and achievable manner. This is really a
20 win, win situation for all. I would sincerely
21 appreciate that you seriously consider this approach,
22 as suggested by agriculture representatives, and by
23 Dr. Los Huertos, in your deliberations today.
24 Again, thank you for your time and attention
25 to this very important issue. I look forward to a

Page 96

1 positive decision for you and your Board.
2 And if you have a question, you can always
3 call him. Thank you very much for this opportunity.
4 Have a good day.
5 **MR. YOUNG:** Thank you, Mr. Sanchez.
6 Any questions or comments?
7 **MR. DELGADO:** Yeah. Sergio, do you want to take
8 any questions?
9 **MR. SANCHEZ:** If you ask me tough questions,
10 Mr. Mayor, I will defer them. You can go ahead and ask
11 me.
12 **MR. DELGADO:** I think everyone is concerned about
13 the small farmers. We understand that they have less
14 resources. Do you think that there's a lot of small
15 farmers that would be in Tier 3?
16 **MR. SANCHEZ:** I know there is. There is at least
17 300 farmers between 2 and 3 and the majority are ethnic
18 minorities, either Hmong or Filipino or Latino, but the
19 majority of them Latino, yes. And that's a fact, it's
20 not a -- we have already -- we have ID'd those
21 individuals.
22 **MR. DELGADO:** Okay. And then it seems like a
23 major point in Lewis and Lake and Simmon and Alejo's
24 letter that you read -- and I think you agree, I can
25 tell, you know, that you're very concerned about

Page 97

A6028BD
PANEL HEARING MARCH 14, 2012

1 this -- a major point is that -- I'm losing my thought
2 process here. That what's being proposed by
3 agricultural community is more workable than the
4 Draft Ag Order that is before us. And so my question
5 is, because the Ag alternative relies heavy on
6 aggregated monitoring, and that's a major sticking
7 point, whereas the Ag Order Draft relies mostly on
8 monitoring that can eventually be attributed to
9 individual farms, that we're hearing it's not workable
10 to do it in aggregate because we'll never know where
11 the problem is coming from, and the law requires that
12 we're able to track it to individual farms, to be able
13 to monitor the effectiveness that each farm is
14 implementing new practices to reduce their
15 contributions, if they're going to an impaired water
16 body, for instance.

17 So my question is, how is workable, in your
18 mind, to do an aggregate monitoring effort, if our
19 laws, that we're required to follow, require us to know
20 on an advantage basis?

21 **MR. SANCHEZ:** Thank you for the question.
22 I think that we have found --

23 **MR. YOUNG:** You know, Mr. Sanchez, you don't have
24 to answer that.

25 **MR. SANCHEZ:** I would like to.

Page 98

1 **MR. YOUNG:** Okay.

2 **MR. DELGADO:** It wasn't a tough question.

3 **MR. YOUNG:** I know, but here's the thing. As to
4 the nonparties, and these are people giving us, kind
5 of, public comments, more policy statements, I think
6 that we should not really engage in a kind of
7 cross-examination, asking them to respond to our
8 questions so much.

9 **MR. DELGADO:** Well, it's really important to me
10 that -- that our elected officials are telling us
11 something is unworkable, so I'm just trying to flush it
12 out.

13 **MR. YOUNG:** Go ahead.

14 **MR. SANCHEZ:** With your permission, I can answer.

15 **MR. YOUNG:** Sure.

16 **MR. SANCHEZ:** What we have found is a lot of these
17 folks, that I addressed in the letter, do not belong to
18 the big groups, like The Farm Growers or The Grocery
19 Shippers or different associations, just because of the
20 resources, because of the outreach, just like it
21 happens with any other service, any other program.
22 It's hard for them to get involved in this kind of
23 stuff. This approach was explained to them by
24 different people. They get this, and they find it
25 easier to begin the compliance and to begin the process

Page 99

1 because it's a huge fear and nightmare for them to
2 begin this process and hiring the different technical
3 staff. Just the fact that it went from a paper report
4 to actually going online, that created humongous fear
5 and chaos amongst them because they don't have
6 computers like that. They don't -- people think that
7 everybody has email and everybody does website stuff.
8 Not everybody does that. And it's very hard for those
9 from -- so this approach actually brings them together,
10 but what they really get excited about, they can
11 actually learn from each other. And you're right about
12 the fact that it doesn't go individually, but they
13 learn together, because they would actually, for once,
14 as a small agriculture and ethnic minorities belonging
15 to this industry, they would actually be included into
16 this kind of group, and learn from each other, and even
17 if they know that the neighbor -- there's a lot of
18 communication amongst them, and for the first time
19 ever, they're coming together as Latino strawberry
20 growers and some different minority groups, they're
21 coming together because of this. So it forces them to
22 come together, and now, for the first time, are talking
23 to each other and so, as they learn what their
24 experiences, and how they monitor, and how it goes
25 through the rotation. They are going to learn from

Page 100

1 each other because they will share information and this
2 is the best way that they could see that is more
3 affordable, more economical, and more efficient and
4 they can actually get them to do, because if they are
5 the ones that are at the Tier 3, which is the most,
6 creates the most impact on the environment, then those
7 are the ones we need to address, and you need to
8 really go out of your way on how do you bring them in
9 rather than putting them in an individual monitoring
10 process.

11 I hope I addressed your question.

12 **MR. DELGADO:** Thank you very much.

13 **MR. YOUNG:** Let me suggest this. Do you have a
14 list of the 300 small farmers?

15 **MR. SANCHEZ:** We can get that to you.

16 **MR. YOUNG:** Why don't you provide it to Staff and
17 they can, you know, make sure -- well, if they want
18 help, if they want assistance, okay, and based on the
19 concerns you've expressed, to make sure there is no
20 communication lapses, that they understand that they
21 can get questions answered, and that would be my
22 recommendations, to make sure that Staff knows who
23 you're concerned about. Especially if there's people
24 who have contacted your office and felt out of the
25 loop. That's what I'm trying to address.

Page 101

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. SANCHEZ:** Okay. We can definitely work with
2 you on that.
3 **MR. YOUNG:** Thank you very much.
4 Okay. All right. I have some other speaker
5 cards here. Anyone from Senator Blakelee and
6 Senator Stricklin's office? Okay.
7 Would you like to address us now?
8 **MR. POSHMAN:** Good morning, almost afternoon, to
9 the Water Board. Last time I spoke before you in
10 Salinas, I was representing solely Senator Blakelee.
11 Today, I have the pleasure of representing both Senator
12 Blakeslee and Senator Stricklin in a joint statement.
13 I'll supply a copy of the statement to you and your
14 Staff after I read it to you.
15 "Regional Water Quality Board
16 members, in November 2010, Staff released
17 a Draft Agricultural Order, which was the
18 subject of many public hearings. Today you
19 are considering adoption of an updated
20 Agricultural Order that is substantively
21 similar to proposed is proposal issued
22 16 months ago. Much has transpired in
23 those 16 months. Dozens of community
24 members provided comments and testified
25 at public workshops in San Luis Obispo,

Page 102

1 Watsonville and Salinas. Working groups
2 were convened to solicit input from
3 subsets of the stakeholder community
4 including agriculture, elected officials,
5 Republicans and Democrats from the State
6 Legislature, and Congress, repeatedly
7 submitted letters expressing their
8 concerns with the Staff Proposal, and
9 urging greater consideration of the info
10 from the agricultural community.
11 The agriculture community went so far
12 as to submit a comprehensive alternative to
13 the Staff Proposal. On paper, this appears
14 to be a process designed to incorporate
15 input from stakeholders. Unfortunately,
16 the proposal before you does not include
17 much of the important effect provided that
18 the agriculture community is supported by
19 the officials who represent them.
20 "The Water Board can check the box
21 on their regulatory to do list to claim
22 that they have asked for state input.
23 However, the purpose of attaining that
24 input is to incorporate the best ideas
25 into the proposal. Because the proposal

Page 103

1 has not significantly changed over the
2 last 16 months, we are forced to draw
3 one of two conclusions: Either the
4 Staff Proposal was superior in every
5 way to the agricultural ideas and so
6 very little is worth including or other
7 potential terms were presented, but the
8 Regional Water Board Staff have already
9 predetermined what should be in the final
10 product.
11 "No one is suggesting that improved
12 water quality should not be vigorously
13 pursued, but we continue to argue, as we
14 have for years at this point, that
15 incorporating feedback from the
16 agricultural community is critical to
17 developing an effective program. This
18 proposal fails to sufficiently do so. We
19 strongly urge the Water Board to delay a
20 vote on the updated Agriculture Order, and
21 instead, engage the agricultural community
22 to develop a proposal that satisfies your
23 statutory obligations, advances water quality
24 improvement, as well as enables Central Coast
25 farms and ranches to continue to providing

Page 104

1 food to our local communities and to families
2 across the nation."
3 And that's from Senator Blakeslee
4 and Senator Stricklin who represent about 1.8 million
5 people in your district.
6 **MR. YOUNG:** Any comments or questions for
7 Mr. Poshman? Thank you very much.
8 Bill Ritz, from Senator Cannella's office.
9 **MR. DELGADO:** I have a question for Staff, I
10 guess.
11 **MR. YOUNG:** Okay.
12 **MR. DELGADO:** Part of the -- thank you, Hans.
13 Part of Hans' comment was that apparently, in
14 every way, the Ag Alternative was not as good as the
15 Draft Ag Order, because in the last 16 months, there's
16 been no significant changes.
17 So my question is I can't recall the
18 timeline. When did the three Tiers, when were they
19 created in response to a public input? Was that more
20 than 16 months ago, or less than 16 months ago?
21 **MS. SCHROETER:** I believe the Tiering was a
22 change, but a change that was adopted in November of
23 2010. However, since then, the Tiering fundamentally
24 changed because we went operation to farm, in response
25 to concern that the Tiering criteria, and we actually

Page 105

A6028BD
PANEL HEARING MARCH 14, 2012

1 got positive comments about the Tiering criteria, but
2 that they should be based on the individual farms.
3 That happened, actually, in May of 2011.
4 **MR. DELGADO:** So maybe later today, we can hear if
5 there's been other changes in response or not. I know
6 now is not the time.
7 **MR. YOUNG:** Okay. All right. Mr. Ritz.
8 **MR. DELGADO:** That would be a concern, right, if
9 we had a volume of input that was not reflected in
10 modifications.
11 **MR. YOUNG:** Yeah.
12 **MR. DELGADO:** Okay.
13 **MR. YOUNG:** I mean, I note that the Tiering took
14 place after we had that meeting in the large hall in
15 San Luis Obispo at the Elk's Club, and that was an
16 immediate outgrowth of that meeting.
17 **MR. JEFFRIES:** The Tiering is based on the size of
18 the farms, and 1,000 acres of farming put them in a
19 certain plateau, compared to the others. So if
20 somebody did 199 acres, they're one category, and the
21 person did 1,000 plus, they're in another category.
22 So, I think, that's the reason Staff -- I didn't read
23 into what Staff is proposing on the Tiers, but that was
24 a lot of the concern from the agriculture community is
25 the size of the farm. And, collectively, if they have

Page 106

1 500 acres at one location, 250 at another and 300 at
2 another, it was all considered 1,000 acres plus one.
3 And that was a concern for me, as well.
4 **MR. YOUNG:** Okay. Mr. Ritz.
5 **MR. RITZ:** Good afternoon, Chairman and Board
6 members. I'm Bill Ritz, District Representative for
7 Senator Anthony Cannella at District 12. He represents
8 900-plus thousand people. I'll get those figures up
9 there for you. I'd like to read a letter this morning,
10 or this afternoon. It's kind of a recap. The Senator
11 held an Ag hearing, an agricultural hearing, he's the
12 chair of the Senate Ag Committee. He held this meeting
13 in Salinas, on February 24th, and I'd just like to read
14 this to you, from the Senator.
15 "On February 24, 2012, I convened a
16 meeting of the Senate Agriculture Committee
17 in Salinas to discuss the impacts of regulation
18 on the agricultural industry. One of the
19 hearing's panel discussions covered the impact
20 that the Draft Staff Conditional Discharge
21 Waiver for Irrigated Lands on the Draft Order
22 would have on agriculture. I wanted to express
23 my gratitude to Mr. Michael Thomas, Assistant
24 Executive Officer, Central Coast Regional
25 Water Quality Control Board, for attending the

Page 107

1 hearing and for providing very thoughtful
2 testimony. I have" -- he included an audio
3 portion of this that should have been sent to
4 Mr. Grayson. I think we talked about that. I'll skip
5 over that.
6 "The Senate hearing raised a number of
7 remaining issues concerning the Draft Order,
8 which I urge the Board to address prior to
9 finalizing the Agricultural Waiver.
10 "First, new members have recently been
11 added to the Board, establishing a quorum and
12 enabling the Board to now act on the Ag Waiver.
13 After only a few months, these new members are
14 expected to fully understand a very complex
15 set of issues that have evolved over several
16 years. Many of the Senate committee hearing
17 participants expressed concern that these
18 board members will not have had sufficient
19 opportunity to appreciate the complexities
20 associated with compliance with these
21 regulations before being asked to vote on
22 them. I also share this concern. It is
23 my understanding that the existing waiver
24 has been extended to September. I would
25 ask that any Board decision be postponed

Page 108

1 from this hearing in March to allow new
2 members more time to study and appreciate
3 the complex issues underpinning the
4 development of an achievable regulatory
5 policy. A farm tour should be arranged
6 for new members so they can hear of and
7 witness some of the practical issues
8 associated with several of the draft
9 recommendations first-hand. In his
10 testimony, Mr. Thomas indicated that a tour
11 of this nature for new members could be
12 possible -- or would be possible.
13 "Secondly, I am concerned that many of
14 the draft regulations have been developed
15 without proper awareness of other
16 agricultural initiatives and regulations
17 and, therefore, may be in conflict with
18 other practices. One example that emerged
19 at the Senate hearing concerned the Draft
20 Order's mandates for the creation of
21 riparian buffers. Several participants
22 pointed out that these buffers would be in
23 conflict with food and safety practices
24 outlined in the Leafy Greens Marketing
25 Agreement, which are meant to prevent

Page 109

A6028BD
PANEL HEARING MARCH 14, 2012

1 contamination of food by pests and
2 animals. This is just one example of
3 possible conflicts with other initiatives or
4 regulations which may be created by the new
5 Ag Order. These conflicts should be surfaced,
6 analyzed and eliminated before adoption of
7 the final regulations.

8 "Thirdly, there seems to be a significant
9 difference of opinion as to how many farms
10 would fall into each of the three proposed
11 tiers of the new Ag Order. In his response
12 letter to me dated April 4, 2011, Executive
13 Director Roger Briggs indicated that Board
14 Staff estimates that 42 percent of growers
15 would fall into Tier 1, 46 into Tier 2 and
16 12 percent of all growers would fall into
17 the more onerous Tier 3. In their testimony,
18 the Monterey County Farm Bureau and
19 Grower/Shipper Association of Central
20 California estimated the number of growers
21 and farms which would be clarified as
22 Tier 3 would be much higher. Neither
23 Mr. Thomas nor the agricultural industry
24 representatives could answer the question
25 of how many acres would fall into each

Page 110

1 category. I would hope that Board Staff
2 could provide both reconciliation between
3 Staff's calculations and that of the
4 agricultural industry for a number of
5 farms/growers and compute an estimate of
6 total acreage, which would be classified
7 as Tier 3. Farmers for Water Quality has
8 estimated the cost of Tier 3 compliance
9 at approximately \$600 per acre per year
10 making that land infeasible for farming
11 based on row crops economics. I think
12 it is imperative that we reconcile the
13 percentage of our agricultural land that
14 may be forced out of production under the
15 provisions of the Tier 3 regulatory
16 requirements contained in the Draft Order.

17 "Fourthly, agricultural expressed grave
18 concerned about the ability to implement the
19 proposed program according to the time lines
20 that have been outlined in the Draft Ag Order.
21 I am told that although there are
22 approximately 40 Certified Crop Advisors (CCAs)
23 in the central coast, there are only five or
24 six CCAs on the Central Coast Region who today
25 have the training and qualifications to help

Page 111

1 agriculture comply with the new technical
2 on-farm data collection and regulations, with
3 further training. Although this may sound
4 like a significant number of CCAs, this is
5 still a shortage of CCAs as compared to the
6 large number of growers on the Central Coast.
7 Statements from grower representatives that,
8 we are being set up for failure from the
9 beginning were met by assurances from
10 Mr. Thomas that the Board's goal was not
11 to be punitive, but rather to work with
12 growers toward achieving compliance. In that
13 same regard, several participants at the
14 committee hearings discussed the difference
15 in approach in developing this new Ag Order
16 from which occurred in 2004 when the
17 agricultural community worked collaboratively
18 with the Board to develop the current
19 Agricultural Waiver.

20 "While I will appreciate the expression
21 of goodwill conveyed by Mr. Thomas, I think
22 it prudent that regulator and regulated agree
23 at the outset on an achievable pathway to
24 compliance for any new regulatory change.
25 The limited number of CCAs available to

Page 112

1 assist growers with compliance is merely
2 one example of a myriad of concerns that
3 exist and which should be fully understood
4 by the Board.

5 "Finally, at the Senate hearing, the
6 Dr. Marc Los Huertos report, "A proposed
7 Model to Implement the Conditional Discharge
8 Waiver for Irrigated Farms" was referenced
9 by the agricultural panelists as presenting
10 ideas that warrant substantial study and
11 consideration by the Board as an alternative
12 to the Draft Order. While this report was
13 discussed in the last Board workshop in
14 early February, it is my understanding that
15 the document has not yet been allowed into
16 the public record and, therefore, has not
17 been viewed by the Board members. Again,
18 this issue is critical to the health of
19 the environment and the public, as well
20 as the health of the economy for the
21 entire region. It would be far better
22 to be open to all information, than to
23 rush to a decision. I encourage the
24 Board to fully consider the ideas
25 contained in the Los Huertos report

Page 113

A6028BD
PANEL HEARING MARCH 14, 2012

1 into the record prior to making any
2 decisions.
3 "I understand that all sides of
4 this issue believe that clean water
5 is very important to maintaining a
6 healthy environment. Indeed,
7 agriculture has worked closely with
8 the Board to improve water quality
9 in the region since adoption of
10 the 2004 waiver. If there was a
11 shortcoming in the 2004 program, it
12 was that the program may not have
13 been adequately enforced against
14 growers that were not enrolled. That
15 should be addressed so that the good
16 actors are not punished for the
17 failures of growers who did not
18 enroll. However, realistic goals and
19 collaboration between the Board and
20 the agricultural community is essential
21 to developing a feasible and
22 implementable solution which achieves
23 co-equal objectives of preserving our
24 agricultural economy in Monterey County
25 while protecting our precious water

Page 114

1 supplies from pollution.
2 "Thank you for your continued work
3 on this issue and for your consideration
4 of the concerns expressed at the
5 February 24, 2012 Senate Committee on
6 Agriculture hearing as summarized herein
7 and as contained in the transcript that
8 we have sent. Sincerely, Anthony Cannella,
9 Senator, District 12."
10 And I thank you for your time.
11 **MR. YOUNG:** Thank you, Mr. Ritz.
12 Perhaps Staff could comment, as part of your
13 presentation, to some of the points raised by Mr. Ritz.
14 Okay. At least that concludes elected
15 officials comments, and it's 12:15, so we are going to
16 take a break for lunch. We're going to try to limit it
17 to one hour as best we can. I urge everybody that
18 wishes to address the Board to submit a speaker card
19 before you leave. Because once I come back from lunch,
20 I'll look up -- I'll look at all the cards, count them
21 up, and we're going to allocate time accordingly. So
22 please get a speaker card and submit it. Thank you.
23 So let's convene back here at 1:20.
24 (Whereupon a lunch break was taken from
25 12:15 p.m. To 1:20 p.m.)

Page 115

1 SAN LUIS OBISPO CALIFORNIA
2 WEDNESDAY, MARCH 14, 2012
3 1:20 P.M.
4
5 HEARING RESUMED
6 **MR. YOUNG:** We are now going to have questions by
7 Board members of Staff. Folks, that's it for the
8 public testimony cards. I'm not going to be accepting
9 any more after this moment. We have about 56. So if
10 everyone was to get three minutes, it would push three
11 hours alone, so I may cut the time down a little bit.
12 I want to see where we end up with our prepared
13 presentations first.
14 Okay. This is the time for the Board to ask
15 any questions of the Staff, the Staff Presentation.
16 Any Board member questions? Okay.
17 Mr. Jeffries.
18 **MR. JEFFRIES:** Thank you.
19 I don't know which Staff member, but I'll
20 just read these off. On the Slide Number 29 that talks
21 about "Impacts of Nitrate Pollution," and it shows
22 different cities and so forth, where did that
23 information come from that gave the cost? And was that
24 cost strictly for nitrates, or other contaminants as
25 well?

Page 116

1 What's that, Matt?
2 **MR. DELGADO:** Through the Chair, while we're
3 waiting, can we also ask questions on the Ag Order that
4 were not part of the presentation, or is there another
5 time for that?
6 **MR. YOUNG:** You know, I mean, we can. I'm just
7 thinking, perhaps, we should wait until we've heard
8 from everybody first.
9 **MR. DELGADO:** Sure.
10 **MR. YOUNG:** I think that would help the flow of
11 things. Jot it down and we'll get to it in the end.
12 **MR. DELGADO:** Thank you.
13 **MS. McCANN:** I can answer your question,
14 Mr. Jeffries.
15 This is the slide you're referring to --
16 **MR. JEFFRIES:** Yes.
17 **MS. McCANN:** -- here?
18 So on the left side you have public drinking
19 water bottles with the cost to King City and Salinas.
20 Those numbers are based upon our discussions with the
21 Water Purveyor, Cal-M Water. So this is only -- this
22 is not for the entire city, King City and Salinas, but
23 just those wells that --
24 **MR. JEFFRIES:** Well, my question was, is this cost
25 directly related to nitrates in the water?

Page 117

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. McCANN:** Yes.
2 **MR. JEFFRIES:** Directly?
3 **MS. McCANN:** Directly, yes. These are wells going
4 out of production or requiring treatment because of the
5 nitrates exceeded in a violation.
6 **MR. JEFFRIES:** Part B of my question is a little
7 bit further down. It says "Monterey County Elementary
8 Schools."
9 Is that all of the county schools?
10 **MS. McCANN:** No. That's one school in San Lucas.
11 **MR. JEFFRIES:** One school?
12 What school was that?
13 **MS. McCANN:** San Lucas Elementary School.
14 **MR. JEFFRIES:** I didn't hear you.
15 **MS. McCANN:** San Lucas.
16 **MR. JEFFRIES:** San Lucas. Okay. So that's -- we
17 have -- and then my next question is -- I don't know
18 what slide it was, but it dealt with the "Nitrates in
19 Old Salinas River Channel." I think Karen touched
20 that.
21 I wasn't challenging that, but you did say
22 something about Elk Horn Saloon, and the report was --
23 I believe you showed from 1988 to mid-1996. You didn't
24 show anything since then because there's been
25 considerable improvement on the Elk Horn Saloon on

Page 118

1 nitrates bulk, because of the Elk Horn Saloon
2 Foundation buying of the property around the saloon.
3 **MS. WORCESTER:** The nitrate is being pulled in on
4 the incoming tide, and this channel, and is going up
5 into the slue.
6 **MR. JEFFRIES:** Okay.
7 **MS. WORCESTER:** I have some data showing extremely
8 low oxygen in some of the shallow areas off the main
9 channel, so it is having problems associated with
10 nutrient enrichment.
11 **MR. JEFFRIES:** But you don't have a report since
12 1996?
13 **MS. WORESTER:** The data I showed you before the
14 slide was all collected recently through our program,
15 or the Ag Program.
16 **MR. JEFFRIES:** Was that included in the graph that
17 was included in the Old Salinas River Channel? Is that
18 all --
19 **MS. WORCESTER:** Yeah. This graph on this
20 particular slide goes through 2011. This is --
21 **MR. JEFFRIES:** Yes, I saw that, but I thought that
22 was pertaining to the Old Salinas River Channel itself
23 and not the Elk Horn Saloon.
24 **MS. WORCESTER:** That's true. They have similar
25 probes up in the slue, as well. That's how they've

Page 119

1 been able to put this story together. The nitrate
2 plumes were coming up on the incoming tides.
3 **MR. JEFFRIES:** Okay. My next question is probably
4 to Michael Thomas, when he talked about the amount of
5 people working on this Ag Order.
6 My question is if the Board approved this Ag
7 Order today, would you have enough Staffing to be able
8 to mandate and to enforce the Order?
9 **MR. THOMAS:** Yes.
10 **MR. JEFFRIES:** Yes?
11 **MR. THOMAS:** Yes.
12 **MR. JEFFRIES:** And still do all the rest of the
13 business the Board does?
14 **MR. THOMAS:** Yes.
15 The way we designed this Order and the online
16 enrollment data base, we now have a data base designed
17 to be able to manage the problem as it exists. And
18 we're bringing this program online with the other
19 programs. For example, we have our underground tank
20 program, which has far more responsible parties then we
21 have in the Ag Program. And the Ag Program has
22 approximately 6,000 cases. We manage those cases
23 through a database system. That is similar to what we
24 have created for the Ag Program. And we bring in this
25 program, modernizing it and bringing it in mind with

Page 120

1 several of our other programs. The way that it is
2 designed today we would be able to manage it far more
3 effectively than in the past.
4 **MR. JEFFRIES:** Okay. That's all the questions I
5 have.
6 **MR. YOUNG:** Mr. Johnston.
7 **MR. JOHNSTON:** Yeah, a couple of questions. One
8 for Karen.
9 I'm looking at Slide 32, "Toxicity in
10 California Waters," and it talks about the highest
11 percentage of toxic sites, Statewide California Central
12 Coast Streams and 56 percent of region 3 sites are
13 toxic, 22 percent of the Region 3 sites are highly
14 toxic.
15 Just so I understand, are these sites
16 throughout the region or are these sites concentrated
17 in the impacted parts of these water sheds where we are
18 expecting to find the problem, and we are looking for
19 the problem?
20 **MS. WORCESTER:** That's a good question.
21 There is several sets of data, so they
22 basically pulled all the data sets they could together,
23 and so the Ag data is in there, our data is in there,
24 and several resource programs are in there. Our data
25 tends to not book us only on the impacted areas, but

Page 121

A6028BD
PANEL HEARING MARCH 14, 2012

1 the Ag data does. And then there's a couple of other
2 data sets, and some of that research was done in
3 Agriculture data. There was an urban study also that
4 looked at urban areas throughout the State. So it's a
5 mix of data sets, and obviously, that is going to
6 affect a percent-type calculation.

7 **MR. JOHNSTON:** So it's a mix of data sets. Would
8 it be safe to say its skewed to the heavily impacted
9 areas?

10 **MS. WORCESTER:** Yes. It's expensive to do, but
11 it's higher risk.

12 **MR. JOHNSTON:** And the other question is for
13 Matt.

14 Um, and you talked about the blurring of well
15 locations for the groundwater monitoring, and that
16 would essentially not reveal the location of a well,
17 just the general area.

18 Does that also mask the identity of the well
19 owner or operator who's reporting?

20 Maybe it wasn't Matt.

21 **MS. McCANN:** That's a question for me.

22 We did talk to our counsel about that, and,
23 yes, both the location and the identity of the well
24 could be used to locate it, so both of these would be
25 examples of disclosure.

Page 122

1 **MR. JOHNSTON:** So if an individual farmer is
2 reporting groundwater data, there will be a -- what
3 will be public data will be the general area of the
4 well, but what will not be public data is either the
5 specific location of the well or the identity of the
6 individual farmer who's reporting the data; is that
7 correct?

8 **MS. McCANN:** That's correct.

9 **MR. JOHNSTON:** Thank you.

10 **MR. YOUNG:** Mr. Jordan.

11 **MR. JORDAN:** Thank you, Mr. Chairman.

12 These are for the report of Mr. Tomlinson. I
13 kind of like the end of the report wrap up, and just
14 for some clarification in terms of what I heard from
15 some of the testimony up to now, and that was one that
16 the process leading to the 2004 Waiver was deemed a
17 collaborative process.

18 Would you generally agree with that?

19 **MR. KEELING:** It was a collaborative process among
20 a very small group of people, small group of select
21 stakeholders. It did not include all stakeholders and
22 including those people who were affected by the
23 pollution.

24 **MR. JORDAN:** And then Congressman Farr quickly
25 jumped over protect and went straight to restoration.

Page 123

1 And correct me if I'm wrong, but the Porter-Cologne Act
2 starts out protecting from degradation rather than
3 restoration; is that true?

4 **MR. KEELING:** Yes.

5 **MR. JORDAN:** Would you call the 2004 Waiver a
6 program, up to now, successful, given that frame of
7 reference?

8 **MR. KEELING:** I think the 2004 Order was
9 appropriate. Its level of regulation was appropriate
10 at the time it was adopted because of the information
11 we had then. Given the data that we have, it is not
12 appropriate to continue to regulate this issue with
13 that kind of Order, with the same level of
14 requirements. At the time, I think it was an
15 appropriate Order. Today, with the information we
16 have, I don't think it's appropriate.

17 **MR. JORDAN:** Okay. And then I had one other
18 question on SIPs and KEM, because they've been referred
19 to a couple of times from the Staff presentation.

20 Can those be implemented during the term of a
21 Waiver Program?

22 **MR. KEELING:** Yes.

23 **MR. JORDAN:** Okay. Thanks.

24 **MR. YOUNG:** Okay. The question we have is let's
25 see Page 17. I think Karen put the slide up. I think

Page 124

1 it's the estuary. And I want to find out how close to
2 the ocean it is, the Santa Maria River. Yeah, that
3 one.

4 **MS. McCANN:** Half a mile from that. Less than
5 half a mile from that ocean.

6 **MR. YOUNG:** And does the arrow point to the
7 sampling station?

8 **MS. McCANN:** Right.

9 **MR. YOUNG:** For that data?

10 **MS. McCANN:** Right. That is the ocean. You could
11 see it in the background.

12 **MR. YOUNG:** Okay.

13 Mr. Delgado and Dr. Hunter.

14 **MR. DELGADO:** Thank you. I believe it was
15 Senator Cannella's representative that expressed a
16 concern of confusion about the Tier percentages and the
17 acres. And he referred to his own letter of -- back in
18 2011, where 13 percent were in Tier 3, but there were
19 no acreages given then. And I note that the 13 percent
20 has changed to 3 percent, perhaps in response to that
21 communication. But my question is can you give us the
22 reason for the change from 13 to 3, and whether you
23 believe the acreages now, and the Tier percentages
24 probably would satisfy Senator Cannella or, I'm just
25 concerned because that was a concern that he

Page 125

A6028BD
PANEL HEARING MARCH 14, 2012

1 expressed.

2 **MS. SCHROETER:** So the numbers that we have
3 currently, I absolutely do think that those are
4 accurate numbers as reflected here, because those are
5 based upon the information submitted by growers, the
6 electronic Notice of Intent. So there is two reasons
7 why they changed from previously reported. One was
8 because there was a fundamental change in the Order.
9 It went from "operations" to "farms," so it got more
10 specific. So farmers requested that Tiering be based
11 on characteristic individual farms, instead of by
12 association of an operation.

13 So, for example, an operation could have been
14 five farms, all with various acreage, and maybe three
15 of those farms now are only in Tier 3 and the other two
16 went to a lower Tier. In addition, at the time of that
17 statistic, we were in the middle of the process of
18 having the growers update their electronic Notice of
19 Intent. So not all growers were reflected in the
20 electronic data base. Some of them were only in hard
21 copy, and so we were just doing our best guess to
22 estimate those numbers. But primarily it went down
23 because of the change from operation to farm.

24 **MR. DELGADO:** Okay. Last month, we heard a
25 presentation by Dr. Marc De Los Huertos, and it has

Page 126

1 been referred to since then, including today.

2 My question is how much of that proposal is
3 implementable with the Draft Ag Order or the Draft Ag
4 Order to be approved? How much overlap is there?

5 **MS. McCANN:** I'd say everything about this is
6 implementable, with the exception of the reporting
7 elements.

8 So the Order would still require that the
9 reporting elements that are in the Order, but the
10 coalitions, the audits, the surveys, the technical
11 assistance provided, the types of management practices,
12 the assessing risks of farms, that is all
13 implementable, as presented in the Ag Proposal, with
14 the current Ag Order or the Draft.

15 **MR. DELGADO:** Last question.

16 I think it's a great idea the more we up here
17 see on the ground what's happening, and what doesn't
18 make sense, and what does make sense, that kind of
19 thing, so it was mentioned today, and previously, the
20 potential for tours. If such tours were to happen
21 after today, how complicated is it to modify the Order
22 in ensuing years, when we learn by trying to implement
23 it, that there is better ways of doing pieces of it?

24 **MR. KEELING:** Tours are certainly possible. We've
25 done them before. We can arrange them. Again, if the

Page 127

1 quorum of Board members go on a tour, we would have to
2 Public Notice them, and we've done that before. So we
3 can do it. As far as modifying the Order, the Board
4 can modify the Order at any time, or schedule a
5 hearing, direct Staff can schedule a hearing to modify
6 the Order, at any time.

7 **MR. DELGADO:** And how -- I mean, it's been very
8 complicated, so how many months does it take for this
9 Board to modify?

10 **MR. KEELING:** So far, the case we have so far, is
11 three and a half years.

12 **MR. DELGADO:** But that's for a wholesale
13 revision?

14 **MR. KEELING:** Yes. I was being witty there.
15 The -- if the Board had a specific change they wanted
16 to make to the Order, I think that would be done in a
17 reasonable amount of time. As you know, our Board
18 meetings are scheduled throughout the year,
19 approximately six meetings per year, and so if the
20 Board decided they wanted to make a change to the
21 Order, we would schedule it out a few months and
22 present the proposed changes.

23 **MR. DELGADO:** All right. Thank you.

24 **MR. YOUNG:** Okay. Dr. Hunter.

25 **DR. HUNTER:** Thank you.

Page 128

1 We heard from elected officials this morning,
2 and their representatives, the concerns that they have
3 for economic impacts, and so I wanted to get some
4 clarification from you on the Staff Report, which,
5 sorry, I think is on Page 16 and 17, that notes some of
6 the differences in the cost analyses that were
7 submitted in the alternative proposal, submitted by the
8 Ag community.

9 And I also note that Staff is not able to
10 clearly say who's represented in that alternative plan,
11 so that is something I'm interested in. But the
12 question I have for you right now is it seems that in
13 the Staff discussion, um, there is some gaps between
14 what costs were included in the analysis conducted by
15 the Ag Plan, versus the cost that, um, you laid out,
16 which included the cost of implementing practices.

17 So can you make up, make that clear, for me,
18 so I'm sure that I understand what that is. It seems
19 like we've been given two different sets and comparing
20 the bottom line.

21 **MS. McCANN:** So both proposals, the primary cost
22 to implement is from management measures, so the
23 individual cost of the management measures for a farm
24 depends on that farm, and that's hard for us to predict
25 without is obviously, the costs are very unique.

Page 129

A6028BD
PANEL HEARING MARCH 14, 2012

1 **DR. HUNTER:** Right.
2 **MS. McCANN:** So those costs should be similar,
3 between the Ag proposal and compliance with the Draft
4 Order, and management orders will be implemented with
5 the Draft Order.
6 The written economic report or cost report
7 that we received, did not appear to include actual
8 estimates of costs to, um, for implementing management
9 practices. It estimated costs for the administrative
10 arrangement of a third-party group, and the activities
11 that the third-party group would provide, in terms of
12 the audits, and that kind of activity.
13 Subsequently, they estimated some costs.
14 They attempted to estimate some costs for management
15 measure implementation, used Tier 3 type requirements,
16 in our opinion, overestimated the application of those
17 Tier 3 requirements, to all farms, when there are only
18 subsets of farms that we have to implement those areas.
19 **DR. HUNTER:** Thank you. I also understand, that
20 by not including the management practices, it leads to
21 the idea that the alternative plan would actually be a
22 lower cost implementation process, but if you consider
23 management practices as part of the fundamental cost of
24 all farms coming into compliance, then we're talking
25 about a higher cost, actually, where coalitions may

Page 130

1 actually Order the third-party option, and actually add
2 to the cost.
3 Am I getting that right?
4 **MS. McCANN:** Yes. That's essentially what we
5 concluded in the Staff report. That it's essentially
6 apples and oranges, if you're only going to compare
7 cost of -- the administrative cost in one proposal to
8 the implementation costs in another proposal.
9 **DR. HUNTER:** Okay.
10 **MR. YOUNG:** Okay. Looks like that concludes our
11 questions of Staff on implementation.
12 Let's move to our prepared presentations.
13 And we'll start with the Working Group Farmers for
14 Water Quality. They have one hour to give us their
15 presentation.
16 **MS. DUNHAM:** We have copies, as requested.
17 **MS. McCHESNEY:** Tess, and how about -- do you have
18 an idea of how much time you want to reserve for the
19 close?
20 **MR. DUNHAM:** Probably five minutes for closing.
21 **MR. MORROW:** Okay. You want us to help you with
22 the clock?
23 **MR. DUNHAM:** That would be great. Thank you.
24 There's two different sets. One with full
25 slides and a lot of text, and one -- there are two for

Page 131

1 each, because some of those are not able to read, so to
2 make it easier for everybody, because I can do that.
3 **MR. YOUNG:** Go ahead.
4 **MS. McCHESNEY:** Are these two different
5 presentations?
6 **MR. DUNHAM:** What?
7 **MS. McCHESNEY:** Are these two different
8 presentations?
9 **MR. DUNHAM:** They're the exact same presentation,
10 but you'll see that we have some slides with a lot of
11 text so we wanted you to be able to use it.
12 **MS. McCHESNEY:** Okay.
13 **MR. DUNHAM:** And we wanted to make sure the court
14 reporter has one, that way she has one for the record.
15 **MR. YOUNG:** Go ahead.
16 **MS. SILVA:** Good afternoon, Chairman Young and
17 fellow Board members. My name is Abby Taylor Silva.
18 Today, I represent the Growers Shippers Association of
19 Central California and Farmers for Water Quality, a
20 collaborative that includes my organization
21 Western Growers, The California Strawberry Commission,
22 The Grower-Shipper Association of Santa Barbara and San
23 Luis Obispo Counties, and The Farm Growers of Monterey,
24 San Benito, Santa Clara and San Luis Obispo Counties.
25 Today, you'll also hear from Kari Fisher, The

Page 132

1 California Farm Bureau Coalition, representing the Ag
2 working group, which is made up of all farm growers in
3 the region, the other groups I just mentioned, and many
4 more agricultural groups. You will also hear from Tess
5 Dunham on behalf of Farmers for Water Quality. Our
6 presentation will provide a response to Staff's
7 representation of their report, and how, at times, it
8 contradicts the reports written. We will provide
9 recommended changes as to the September 1 Draft Order
10 to Draft MRPs, Tier comparisons between Draft Order and
11 the Agricultural Alternative and a case of the legality
12 of Agricultural Alternative.
13 **THE REPORTER:** Excuse me. Can you slow down just
14 a touch and speak up a little bit louder?
15 **MS. SILVA:** Absolutely.
16 **THE REPORTER:** Thank you, so much.
17 **MS. SILVA:** I'll get this to my height. Okay.
18 **THE REPORTER:** Thank you.
19 **MS. SILVA:** Some have said that agriculture hasn't
20 been (inaudible word). On the contrary, following the
21 dissolution of the Ag Program, agriculture's interest
22 in finding a solution has only increased.
23 In addition to submitting a proposal for the
24 most comprehensive, robust, irrigated land coalition in
25 the State, and arguably the Nation, we reached out to

Page 133

A6028BD
PANEL HEARING MARCH 14, 2012

1 the Packard Foundation last spring to facilitate a
2 dialogue with environmental community leaders.
3 We agreed that we all wanted to see water
4 quality improvement on the Central Coast and were all
5 similarly interested in ensuring the continual
6 viability of commercial agriculture on the Central
7 Coast.
8 Unfortunately, despite review of many ideas
9 presented by both the agricultural and environmental
10 community, we were unable to find a solution we could
11 all agree to.
12 Additionally, we then began working with
13 Dr. Los Huertos in an effort to find more science and
14 on the ground intervention strategy to our original
15 proposal. Although Dr. Los Huertos' written report, as
16 expressed to you, verbally, in February, was not
17 allowed admittance into the record.
18 For the past two months, it has been public
19 and we've actively solicited input from all
20 stakeholders, including agriculture, conservation,
21 scientific and environmental communities.
22 Our solution-oriented focus has not dimmed.
23 Today, you'll hear more about why we believe ours is
24 the best option in meeting our mutual goal in improving
25 water quality.

Page 134

1 Thank you for providing us the time to speak
2 to you today.
3 Thank you.
4 **MS. FISHER:** Kari Fisher of California Farm Bureau
5 Federation.
6 I'm going to go over some of the responses to
7 misconceptions that were in the latest Staff Report,
8 and some legal issues that we feel are key to reiterate
9 to you guys today.
10 Approaching Misconception 1 and 2 regarding
11 if growers are treated the same or different under the
12 Waiver, we agree with Staff that, yes, growers are
13 treated differently within Staff's Order. However,
14 there's a key designation with regard to how growers
15 are actually treated under Staff's Waiver.
16 Growers are treated differently, but the
17 treatment is based on size of operation, and not threat
18 to water quality. And if the key of this Order here,
19 for the last three and a half years, is to prioritize
20 specifically on threats to water quality, it seems
21 logical that the treatment of Tiers should be on actual
22 threat to water quality, and not arbitrary designations
23 and open-ended determination of size of operation, as
24 determined by the Executive Officer, as we'll go into
25 right now.

Page 135

1 Additional examples of where the Staff Report
2 contradicts itself, are put on our slides. We just
3 pulled up, excuse me, four of them. There are many
4 more, but these, right here, talk about Tiering, and
5 how growers will actually be put into different Tiers.
6 As you can see, I highlighted the Executive Officer
7 maintains a lot of discretion with regard to where a
8 grower will be placed in a Tier, and being able to move
9 the grower, from one Tier to a higher Tier. We've
10 also -- also, it depends on the definition of operation
11 or farm, and there is conflicting information with
12 regard to what exactly is an operation. What will be
13 characterized as the operation? It's a broad statement
14 that is in itself, vague and open-ended. The wide
15 discretion that's also given to the Executive Officer
16 to change who falls within each Tier really hampers the
17 ability to come before the Board and tell you exactly
18 how many growers will be in Tiers 1, 2 or 3.
19 Right now, you have Staff estimation. Again,
20 that's an estimation that we don't agree with. And,
21 really, you guys will not know, until the end of the
22 day, where growers fall, in Tiers 1, 2 or 3, and that
23 will change, again, throughout, depending on the EO's
24 discretion, at any time, to move folks.
25 Just briefly, for Misconception 3, with

Page 136

1 regard to what was previously talked about, the
2 figures, the 3 percent versus other percentages that
3 were thrown out earlier, what should be also pointed
4 out, is that the 3 percent is just the number of
5 growers, and there's also the 14 percent figure that is
6 never mentioned, that is, kind of, put in there, in the
7 Staff Report, and that's the number of acres. And that
8 really needs to be highlighted, so folks understand
9 that there is a big difference between the 3 percent
10 figure and the 14 percent figure.
11 With regard to Misconception Number 4, on the
12 Draft Order, not specifying how a grower must comply
13 with the Order, we disagree with this statement and
14 certain examples include Paragraph 35, Page 19, of the
15 Staff Order, which says, "Dischargers must implement
16 source control or treatment management practices to
17 prevent erosion" -- and goes on to talk about Treatment
18 and Control of Stormwater Runoff, as you could see the
19 first, on the first line on the bullet point says the
20 words "Discharger must implement."
21 This is very specific language that dictates
22 mandate practices with regard to erosion and stormwater
23 runoff. And the Basin Plan, your own Basin Plan says,
24 on Page 512, "Erosion shall be minimized through
25 BMPs." It does not use the word "must implement."

Page 137

A6028BD
PANEL HEARING MARCH 14, 2012

1 With regard to Page 38, or excuse me,
2 Paragraph 38, Page 19, the Order says, "Dischargers
3 must maintain existing, naturally occurring riparian
4 vegetation and maintain riparian areas."
5 The Basin Plan actually used the language
6 "shall be maintained" when -- excuse me -- "wherever
7 possible."
8 As you could see, "maintain wherever
9 possible" is very different than "must maintain
10 existing naturally occurring and maintain riparian
11 areas."
12 With Attachment 2C, Page 20, which is the MRP
13 for Tier 3, the Staff Report dictates that these folks
14 will have to have Buffer Plans. Growers must submit a
15 Water Quality Buffer Plan, which must include the
16 following three bullet points a, b and c, as you see up
17 there.
18 The requirement of a Buffer Plan -- and we've
19 heard otherwise from the Staff Report -- but the
20 requirement, as written in the language in this MRP, is
21 a dictation of a management practice.
22 If the true intent of the Water Quality
23 Buffer Plan is to protect riparian habitats, the MRP
24 and the Order should state this and allow growers to
25 choose the appropriate implement practice that is

Page 138

1 applicable to their Tier, whether it be a riparian
2 buffer, or something else beneficial for their land.
3 With regard to Misconception 5, the "Draft
4 Order requires growers to implement management
5 practices to minimize waste."
6 We disagree with this conclusion, as the
7 "Draft Order contains many provisions that require
8 immediate compliance with water quality standards even
9 if effective management practices have yet to be
10 developed."
11 On this slide right here, I'll get into more
12 detail. As we heard earlier today, it was told that
13 notwithstanding the fact that the Order specifically
14 says, must meet water quality standards, Staff will not
15 enforce the water quality standards. However, that's
16 not what the plain language of your Order says.
17 Additionally, Staff put up a slide that
18 showed Attachment A, and said that Attachment A would
19 allow discretion with water quality standard
20 achievements.
21 However, Attachment A is not within the
22 Order. Attachment A is off -- Attachment A is, I
23 believe, Paragraph 2, which is cited -- is a filing
24 provision. It's not a requirement of the Order.
25 Additionally, as currently drafted in the

Page 139

1 Order, a third-party can come to the Board and petition
2 the Board to enforce water quality standards on any
3 farmer immediately, as currently proposed in the
4 Order. So, therefore, the conclusion that has put
5 forth today is that the Order's direct language must
6 comply with water quality standards, does not apply, is
7 false.
8 With regard to Table 4 -- and this is on
9 Page 38 of the Order -- there's a table that has
10 milestones. Again, with the interpretation of not
11 having to meet water quality standards, Table 4, as
12 pointed out, as this is what folks should achieve in
13 their milestones until they are able to meet the water
14 quality standards.
15 The problem with Table 4 is simply, it is a
16 list of milestones. As stated in the Staff Report, the
17 milestones themselves are not complying with
18 conditions, and they are not enforceable.
19 So, therefore, these milestones are not
20 enforceable, and immediate compliance of water quality
21 standards, as stated in the Order, will comply.
22 With regard to Misconception 6, regarding
23 growers having to line ponds, we disagree with the
24 statement that this is not a requirement. As you can
25 see, pointed out in the language in Paragraph 32, and

Page 140

1 86, the use of the words, "must construct and maintain
2 such containment structures to avoid percolation of
3 waste to groundwater" was a dictation preventing
4 percolation and the requirements for complying with.
5 Regarding Misconception 7, regarding the use
6 of tile drains, tile drains within this Order, as well
7 as Staff Reports, contain information that is
8 conflicting. The Draft Order previously indicated, and
9 in one place still indicates, that tile drains will be
10 addressed in subsequent Orders. In another place in
11 the Order, it says tile drains must be in compliance
12 and must meet all monitoring and reporting requirements
13 of any other discharge.
14 So, therefore, a grower is left to wonder
15 what do they have to do in order for them to be in
16 compliance?
17 With regard to Misconception 8, the Draft
18 Order says that 100 percent profit efficiency is not
19 required. However, if you read Tier 3, for Tier 3
20 dischargers, the Draft Order clearly requires crops in
21 annual rotation to achieve 100 percent crop
22 efficiency. The exact language is provided for you
23 here.
24 Therefore, we question the determination upon
25 reading Bullet a, about meeting the ratio target equal

Page 141

A6028BD
PANEL HEARING MARCH 14, 2012

1 to one. How it does not require the dictation of
2 meeting a 100 percent proficiency.

3 With regard to Misconception 10, regarding
4 combining monitoring proposals and combined practices.
5 "While the Draft Order suggests that combined
6 monitoring may be allowed, the cooperative groundwater
7 language as proposed provides no opportunity to
8 implement such an option. Further, to support its
9 response to this misconception, the Staff Report cites
10 a finding of the Order, not an actual provision of this
11 Order."

12 To address this, I'll actually propose actual
13 provisions to the Order a little bit later on in the
14 presentation.

15 With regard to Misconception 11, the Draft
16 Order states that there are not issues with proprietary
17 information and that proprietary information will be
18 protected. Well, technically, we agree with the
19 statement, there is a prior issue that has been, um,
20 been passed up. In reality, when we look at the MRP,
21 the reporting requirements for Tiers 2 and 3, certain
22 reporting requirements will make -- will be, uh,
23 reported in a public manner. Therefore, the
24 information will actually be of a public release.
25 In Attachment 1B, which used to be referred

Page 142

1 to as Attachment A, Additional Findings, the Staff
2 includes 140 Findings. However, they do not comply
3 with case law that requires Findings to bridge the
4 analytical gap between supporting facts and the Board's
5 ultimate decision.

6 These Findings are merely recitations and
7 summaries of studies and statements made by staff. In
8 order to remedy this, we propose the Board not adopt
9 Attachment 1B in its current state.

10 A large flaw in Attachment 1A, or Table 1A in
11 Attachment 1B is the use of Indicators of Narrative
12 Objectives within this Table. These Indicators of
13 Narrative Objectives are not adopted numeric
14 objectives, rather, within this Order, the Indicators
15 have been interpreted and translated into
16 biostimulation objectives. These objectives are not
17 within your Basin Plan. You have not adopted these.

18 Further, the use of such numbers will
19 conflict with what the State Board is currently doing
20 as they are proposing and currently developing a
21 Statewide nutrient policy. In order to remedy this, we
22 propose deleting the Table 1A. The Order already
23 requires compliance with Basin Plan, including those
24 adopted objectives, which are in your Basin Plan. We
25 also suggest deferring to the State Board's policy as

Page 143

1 they are currently going to develop, if they haven't
2 already, a nutrient objectives with respect to nitrate
3 levels in the surface water.

4 And briefly, we would also just mention that
5 we still have -- continue to maintain our concerns with
6 regard to CEQA compliance with your environmental
7 review and those comments that refer to all the letters
8 we have submitted thus far.

9 **MS. DUNHAM:** Thank you. Tess Dunham, Somach
10 Simmons & Dunn. I'm going to continue with our
11 presentation.

12 In -- at the February workshop, I believe,
13 that we talked about, you know, the fact that we had
14 the new September 2011 Order, much of what we had
15 submitted previously was based on previous orders and
16 there seemed to be an interest in looking at what
17 changes the Staff had made, what changes did we still
18 feel absolutely necessary.

19 So we've gone back. We reevaluated the
20 September 2011 Order, as well as what we have
21 proposed. We have tried to really prioritize and
22 select in the, you know, auspice of negotiation, as
23 discussed earlier, what we think would be the
24 necessary, appropriate changes in law. It will look
25 like there's a lot of slides. When you think,

Page 144

1 conceptually, of everything that is within this Order,
2 we really tried to limit it to a few number of
3 significant changes for us. So with that -- I'm going
4 to see if I can get this out.

5 Okay. I had put them in order of the Draft
6 Order and paragraph of the -- and identified the
7 paragraph and the page number. This is off of the
8 September 2011, so hopefully we can follow.

9 The first is you know, we originally had our
10 Ag proposal discussed within what we called the
11 Attachment B. And in reevaluating everything, it seems
12 that it might be more appropriate if the Ag
13 Alternative, as we proposed, was included as a specific
14 provision, or part, within the Order. And so we are
15 proposing that today, um, in showing us how that would
16 fit within the Order itself, within the specific
17 language.

18 This is your Paragraph 10, where the Staff is
19 starting to refer to a cooperative program. And we
20 have modified this slightly, to reflect that, what we
21 call Part B, and which we'll get to, where I have a
22 Part B here, that will go through to explain what the
23 Ag proposal would be within this context, which is not
24 much different than what we put to you before.

25 **MR. KEELING:** Ms. Dunham?

Page 145

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. DUNHAM:** Yes?
2 **MR. KEELING:** I'm sorry to interrupt you, but just
3 for clarification, Mr. Chairman and Frances, is this
4 new information? Do we need a ruling, or discuss
5 whether it's new information?
6 How do we handle this?
7 **MS. McCHESNEY:** No. It's going -- it's okay if
8 she presents this information and the Board will take
9 it under consideration.
10 **MR. KEELING:** It's okay to present new
11 information?
12 **MS. McCHESNEY:** There's no new information.
13 **MR. KEELING:** What is Part B?
14 **MS. DUNHAM:** Part B is our former Attachment B.
15 It's essentially the same thing, reformatted. There is
16 no new information being presented.
17 **MR. KEELING:** Okay. Thank you.
18 **DR. HUNTER:** I'm sorry. I just want to be sure is
19 am I on? I just want to be sure I understood that.
20 You have a section of your proposed Order,
21 um, that was called something else prior and now is
22 being referred to as part B.
23 **MS. DUNHAM:** That's correct.
24 **DR. HUNTER:** And what was it formally called?
25 **MS. DUNHAM:** Attachment B in the Ag Proposal.

Page 146

1 **DR. HUNTER:** Attachment B. Okay. Very good.
2 **MS. DUNHAM:** So this is a modification to the
3 current September 11th pre-Ag Order Paragraph 10 to
4 recognize the parking. This is -- would be a new
5 paragraph that just provides further clarification as
6 to which general conditions apply to the various
7 Tiers. One of the -- and some of the things we're
8 proposing things, here, is to express some of the
9 concerns of Staff. Staff expressed concerns that it
10 wasn't clear what provisions applied to which Tiers
11 within the Ag proposal, so this new Paragraph would
12 clarify that the provisions in Parts E, C, D, and H
13 would apply to everybody, those including the Notice of
14 Intent, the farm plants, all of the management, the
15 general conditions, the management practices, etc.
16 would all apply and what provisions would not, due to
17 selecting the option Part E. And, also, if we get
18 later on, but we've also included some time schedule
19 provisions that we'll talk about.
20 Next, is again to recognize if the Board were
21 to choose to adopt the Ag Alternative, there would need
22 to be a change. That's in Paragraph 18, where if the
23 executive officer elevated someone from a current
24 Tier 1 to Tier 2, to an higher Tier, and someone had
25 not chosen the Ag Alternative, to the Board included,

Page 147

1 they should have the opportunity to get that put in at
2 that point in time. So it's to recognize a change in
3 Tiers based upon the EOs discretion.
4 The next portions are more about Ms. Fisher
5 discussed the immediate compliance with Board Quality
6 Standards and the current language from Paragraph 21,
7 which we have expressed considerable concern with over
8 time. And the fact that Staff has indicated that they
9 would use discretion with respect to enforcement is
10 fine, but it doesn't provide me or my clients with much
11 comfort considering the fact that, you know, the
12 Board -- others could petition the Board and force them
13 to require immediately compliance for quality
14 standards, with the provision written as it currently
15 stands.
16 So what we have done is actually propose a
17 rewriting of the Water Standard Requirement, to where
18 it -- you divide it up between surface water
19 limitations and groundwater limitations, recognizing
20 that there's a difference between the two, and that,
21 basically -- and the accept is authorized within the
22 time schedule provisions. We're going to show you a
23 little bit later on.
24 But we are proposing that the Order
25 specifically include time schedules that will allow

Page 148

1 eight years of surface water and 15 years for surface
2 and 50 percent for groundwater.
3 And with respect to the Water Quality
4 Standards, to give us that time, until the implement of
5 management practices, so there is not that fear on our
6 part of potential requirements with respect to
7 compliance, and so this does that.
8 And also because we have expressed our
9 concerns with how the Table 1A has been identified, as
10 Ms. Fisher just did, instead referencing that Table, we
11 suggested that you reference just the applicable
12 standards to the basic plan which is where all the
13 standards are. Those would be groundwater limitations
14 that nears the surface water limitation. You will see
15 the deletion of Paragraph 22. To me frankly, I didn't
16 see a lot of difference between Paragraph 21 and 22.
17 It appeared to me that Paragraph 22 was duplicative of
18 the water quality standards with an abatement Plan
19 instead we limited it.
20 This is a small change, just to recognize
21 that Board the type of discharges that are covered by
22 the Order, it had organic materials, such as organic
23 pesticides. It is my understanding in talking with a
24 few folks in the industry that there are a few
25 registered pesticides that are not considered to be

Page 149

A6028BD
PANEL HEARING MARCH 14, 2012

1 organic so this is a small change, just to change it to
2 recognize that it covered registered pesticides.
3 Now, we get into the stormwater runoff issue,
4 which there was some considerable discussion with at
5 the last hearing, with respect to the controlling that
6 one half inch of storm, and some concern for many they
7 were concerned how they would accomplish that. So in
8 order to address that concern and issue, we would
9 recommend that we, first of all, strike the word
10 treatment because treatment, you know, kind of
11 signifies more of a points verse type operation that we
12 are going to have some type of facility to treat
13 something, and instead replace with water quality
14 management practices, which is what I think we were all
15 hoping for. And now we just removed the reference with
16 respect to the controlling of the half-inch storm.
17 **MS. McCHESNEY:** I just thought I'd interrupt for a
18 second. I think some of the things you are proposing
19 are reasonable alternatives and -- but when I look
20 ahead of your presentation, it seems like a lot of very
21 significant changes and not having had the opportunity
22 for other parties or the Board to even look at this, I
23 think will create an issue, and you know I think you
24 need to explain why you think that is allowed.
25 **MS. DUNHAM:** Do you want me to explain when I get

Page 150

1 to those, or do you want me to do that now?
2 **MS. McCHESNEY:** Let me look to see where I think
3 it --
4 **MS. DUNHAM:** I think I'm okay for the next couple,
5 so should I go ahead?
6 **MR. YOUNG:** Let's let her identify this page.
7 **MS. McCHESNEY:** I think the new stuff, Part A, I
8 think this part is addressing some of those issues that
9 have been -- having a whole new subpart and it looks
10 like it's quite new and of concern.
11 **MS. DUNHAM:** Well, we would disagree with that.
12 And, actually, a lot of the changes we've made to the
13 Part A, which address some of the concerns expressed by
14 Staff, in the Staff Report.
15 **MS. McCHESNEY:** Okay. Why don't you give more
16 about that when you get to that.
17 **MS. DUNHAM:** Okay. So this changed Paragraph 38
18 is talking about the riparian corridor issue, and we
19 are looking for a clarification that basically says
20 that we should be maintaining to the extent feasible,
21 to have a requirement that seems to be an absolute, as
22 a must, without some recognition that there has to be
23 some feasibility associated with it, so we recommend
24 that you make it feasible.
25 The next one on Paragraph 39, again, is

Page 151

1 dealing with some of the riparian corridor issues, and
2 we -- currently says that, you know, where disturbance
3 of aquatic habitat is necessary, but it limits it only
4 for the purpose of water quality improvement or
5 restoration activities and we would contend that, well,
6 you may to disturb aquatic habitat for other purposes
7 as well, and, in fact, there were many other regulatory
8 programs that are there to protect the aquatic habitat
9 such as the 404 Permitting process, the street and
10 alteration process. Some counties have ordinances, so
11 there would still be significant protection for aquatic
12 habitat for any type of disturbances.
13 Page 40 -- Paragraph 43, Page 20, this is a
14 change to the Farm Plan, and this is -- I would
15 classify it as a minor clarification, but a key
16 clarification. And currently, you know, there has
17 always been our expectation that the Farm Plans will
18 remain on site and they would be convenient to Regional
19 Staff upon request at the farm or at site, and they
20 would not be submitted to the Regional Board because at
21 that point it would become a public document.
22 As currently worded, the Draft Order just
23 says they have to be presented upon request, which to
24 me, can indicate the request could be submitted to the
25 Regional Board, automatically making it public.

Page 152

1 Our clarification is to ensure that what we
2 all know and understand, that the intent is that they
3 remain on the farm and that they are given at the time
4 that the inspection occurs on the farm.
5 Paragraph 46, 21, I actually recommend that
6 we delete this whole paragraph, primarily because it's
7 recitation of existing law. It's not a condition of a
8 waiver of the Order. It's basically a summarizing of
9 what the Executive Officer's authority might be under
10 13267 and what could happen under 13304, which is a
11 Cleanup and Abatement Order process, which is a whole
12 other different process, so it seemed inappropriate to
13 include as a Condition of the Waiver so, you know, we
14 recommend it be deleted because it serves no purpose
15 with respect to the condition of the waiver.
16 Paragraph 50, Page 22, um, originally we had
17 suggested that there be a completely different
18 groundwater monitoring, and a different monitoring MRP
19 for those that select the Ag Alternative. We have
20 rethought that, and we think this is not necessary, and
21 instead we would maintain the MRP as currently exists
22 for all three Tiers with some adjustments for those
23 that would select the Ag Alternative. The adjustments
24 being that some of the reporting requirements for Tier
25 3, which are one of our petty objectives with the Ag

Page 153

A6028BD
PANEL HEARING MARCH 14, 2012

1 Alternative would no longer apply so we have specified
2 which parts of the Tier 2 MRP and which parts of the
3 Tier 3 MRP would apply to those who elect to Part E and
4 those who do not and I would also say as we get through
5 you're going to see that we have withdrawn or we are
6 suggesting instead of original groundwater monitoring
7 alternative, we have taken steps currently, which as
8 proposed in the September 2011, and we are suggesting
9 some modifications instead of something completely
10 new.

11 Page 52 is just to recognize that the MRPs do
12 have a cooperative groundwater monitoring program or
13 alternative groundwater and so see this is a change to
14 reflect that.

15 Page 56, Paragraph 24, I know this is
16 difficult to read what's on the slide, I apologize to
17 those in the audience, in particular.

18 If the Board were to adopt the Ag Alternative
19 in Part E, then there will need -- have a need for
20 people to select that option within their Notice of
21 Intent process. And also if there was a potential for
22 aquatic groundwater monitoring, like there is for
23 surface water, then the people would need to be able to
24 select that option. So the first two changes are in
25 order to indicate those options, and so people would

Page 154

1 have to let the Board know which option they were
2 selecting.

3 The deletion of the last one, we suggested it
4 to be deleted for a couple of reasons. One, you're
5 already requiring a farm and ranch map, so I would
6 assume that is part of the map. Any type of springs
7 would already be identified on the map so there is no
8 need to have this requirement with respect to requiring
9 an indication of the presence of springs on the
10 property.

11 I also suggested leaving this last one more,
12 because it also talks about identification of any
13 wetlands area. Well, as many of us know, sometimes it
14 takes a biologist and a complete wetland delineation to
15 determine what is an actual wetland, and I don't think
16 this is something we want to required growers to hire
17 geologists to conduct all the wetlands delineations on
18 the property.

19 Part E -- with respect to Part E, why we
20 don't believe it makes any substantive changes.

21 First of all, it is absolutely,
22 fundamentally, still a third-party program that people
23 elect and have an option to join. We have been asked
24 whether there are criteria for the third-party. We
25 have now developed some criteria for the third-party.

Page 155

1 In order for the executive officer to make this
2 determination whether he thinks, he or she thinks that
3 the third-party is actually able to conduct the work
4 that would need to be conducted, so that continues to
5 exist. There is still the requirement that all farms
6 be audited within the term of the Order. At least 20
7 percent would have to be done. We have included some
8 new reporting requirements, because the Board has
9 indicated they wanted some additional reporting
10 requirements. So in explanation with respect to
11 reporting requirements, we have incorporated some of
12 the reporting elements as testified to by for Marc Los
13 Huertos at the hearing orally. So that is why we
14 didn't think what we doing is anything beyond what has
15 already been discussed with him.

16 We have also made changes to address one of
17 the fundamental concerns that the Board Staff has had
18 with respect to requirements of Water Quality
19 Standards. We removed language talking about working
20 towards Water Quality Standards, and has a provision
21 specific to dealing with and implementing management
22 practices for Water Quality Standards. So those would
23 be the reason why we didn't believe that our Part B and
24 proposed here is fundamentally different from what was
25 in that original Part B.

Page 156

1 The process has changed slightly, to reflect
2 with respect to timing, but again, it's still not a
3 program with reporting summarized and, you know,
4 accountability to the Board.

5 So with that, do you want to me to go ahead
6 and go through the text? Am I allowed?

7 **MS. McCHESNEY:** Without having to be able to go
8 through it, it's hard to say if what you just said was
9 accurate, but generally the rule is if there is no
10 written evidence, it needs to -- it's --

11 **MS. DUNHAM:** I don't believe this is evidence.
12 This is suggestive language changes to incorporate our
13 proposal, as we discussed previously, in a slightly
14 different format, and with some new provisions that
15 addressed Staff's concerns.

16 **MS. McCHESNEY:** Well, I think it's up to the
17 Chair.

18 **MR. YOUNG:** It's fine with me. I'd rather her go
19 ahead and discuss what's in here. There's a lot of
20 material. The Staff is going to have to respond to it.

21 **MS. McCHESNEY:** And what I would suggest is that
22 if there are any other party that want to have a little
23 bit more time to also respond, we have to take that
24 time.

25 **MR. YOUNG:** I don't see it as evidence, per se.

Page 157

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. DUNHAM:** I don't see it as evidence.
2 **MR. YOUNG:** It's a proposal on language changes.
3 **MS. McCHESNEY:** Right.
4 But the question is does it prejudice any
5 party to the proceeding, and without having seen it
6 ahead of time, I think it's okay to go ahead, but just
7 provide additional time for Staff and other parties to
8 provide response.
9 **MR. YOUNG:** Okay. If anyone feels that they're
10 prejudiced by it, let us know and if they need
11 additional time, we'll deal with that request at that
12 moment.
13 So you go ahead.
14 **MS. DUNHAM:** All right. Here we go. Okay.
15 So how this would work --
16 **MR. YOUNG:** Excuse me, Ms. Dunham.
17 Yes, Mr. Johnston?
18 **MR. JOHNSTON:** My only question is if we're going
19 to allow Staff and other stakeholders to respond to
20 this -- I know there's a limited number of copies, but
21 I'm just wondering if there are -- I see Staff is
22 working on copies of it -- I'm wondering if there are
23 any other stakeholders that need copies of this to
24 follow along on, so they could intelligently respond to
25 it, because it's certainly easier for me follow this on

Page 158

1 the piece of paper then to track it on the screen
2 there.
3 **MS. DUNHAM:** I have a few more.
4 **MR. YOUNG:** Nathan Allen; right? Mr. Shimek.
5 **MS. DUNHAM:** I have two more.
6 **MS. McCHESNEY:** Well, Jennifer Scotland.
7 Anyone else? I got one more. So that --
8 **MS. DUNHAM:** And I am going to apologize, in
9 advance, that I have broke absolutely every rule that
10 exists without protocol with respect to how much
11 verbiage is on this slide. It is the only way I could
12 do it.
13 **MR. KEELING:** Mr. Chairman, if as we go through
14 this, if we Staff believe that this is new information,
15 what are our options? We couldn't undo it. We can't
16 put toothpaste back in the tube.
17 **MR. YOUNG:** You can let me know if you think that
18 that is happening, but I perused this very quickly, and
19 this is language, proposed language changes, so, I
20 mean, first blush that's the way I'm referring it. If
21 there is that information you can interrupt the speaker
22 and let me know, and we'll stop the clock and I'll hear
23 you out.
24 **DR. HUNTER:** I have a question.
25 **MR. YOUNG:** Dr. Hunter.

Page 159

1 **DR. HUNTER:** Can you characterize for us what your
2 presenting? You say you've renamed Attachment B?
3 **MS. DUNHAM:** Yes.
4 **DR. HUNTER:** So can you characterize for us how
5 much of Attachment B survived this transition to the
6 new Part B? Are we looking at have you dropped half of
7 the what you proposed before, and are you inserting
8 additional language that we really haven't read
9 before? Because I don't have any way of understanding
10 how much of a shift this could make at this point in
11 time.
12 **MS. DUNHAM:** I have to say, I actually don't think
13 it fundamentally makes a huge difference. Okay.
14 **DR. HUNTER:** But what does that is what do you
15 mean by "fundamentally"?
16 **MS. DUNHAM:** So is it still an audit program?
17 Absolutely. Is it still an alternative to the Tier 2
18 and Tier 3 report requirements? Absolutely. Is there
19 still a requirement that all farms that have been
20 audited within the term of the Order? Yes. Is there a
21 third-party that conducts that? Yes. Does it better
22 clarify that the audits are independent then what the
23 Attachment B did? It's part of our text to make sure
24 it's independent. Attachment B included requirements
25 for a Technical Advisory Committee, as well as a Public

Page 160

1 Advisory Committee. That's in here, as well. It does,
2 I think it probably puts a little bit more discretion
3 to the Executive Officer to approve a third-party, as
4 well as approving the work plan in the process of the
5 third-party for the Executive Officer of the Regional
6 Board? It does, within the original Attachment B
7 there's this whole uphill process for members of the
8 group. That is not specified in here because it seems
9 like it's more an internal issue for any third-party
10 and it's not necessarily a Board issue. Have we
11 clarified what the third-party requirements are to the
12 Board, that you get a list of those that are not of
13 good standing.
14 We've included some new reporting
15 requirements because it appeared that there was in
16 interest in that. We've included some new requirements
17 specific to nutrient management because of such
18 concerns associated with nutrient management. So
19 they're clear that nutrient management is a key
20 provision versus just a part the farm plan that was
21 original there. So we've tried to make some
22 clarifications to make it a little clearer as to what
23 that process would entail.
24 **DR. HUNTER:** Thank you.
25 **MR. YOUNG:** May I ask this: Is there any feeling

Page 161

A6028BD
PANEL HEARING MARCH 14, 2012

1 by the rest of the Board that we should not entertain
2 the presentation of this Part B?
3 **MR. DELGADO:** Just in the sense of fairness, I'm
4 wondering if everyone knew this was allowable, might
5 other third-parties have brought forth new language,
6 number one.
7 And, number two, if we the Board or the Staff
8 had come up yesterday with a new copy of the Draft Ag
9 Order, that had new changes that no one had seen, what
10 would we have heard today? Would we have heard that
11 it's unfair because they didn't have a chance to
12 consider those changes in advance?
13 My last question is, could we have gotten
14 this a week ago or three days ago?
15 **MS. DUNHAM:** Well, I doubt that you could have
16 gotten it three days ago, because there wasn't any
17 allowance for additional written communication. So I
18 have only the opportunity to present it to you today.
19 And I believe there may be others that might
20 have alternate language that they could have presented
21 today. I know there are some folks in the
22 environmental community who were, for better term,
23 shopping around some alternate language that they
24 shared with folks that may be presented as well. So
25 there may be others that have language. I don't want

Page 162

1 to speak for them, and they would have the same
2 opportunity to present the same language today, as
3 well.
4 **MR. DELGADO:** Thank you.
5 **MR. YOUNG:** Mr. Johnston and Mr. Jeffries.
6 **MR. JOHNSTON:** I would point out that at our last
7 workshop in Salinas, I forget who it was, Mr. Ali or
8 Mr. Shimek, proposed some changes that they thought
9 would be appropriate to the Order. When talking about
10 their conditional support of it, I would also say that
11 frankly, I have some revisions in my back pocket, too,
12 that I haven't shared with the other Board members that
13 would not have been appropriate. So, yeah, I don't
14 have an issue with seeing what people think -- I think
15 the whole point of this discussion here today is for us
16 to listen to you folks, is to hear from stakeholders,
17 in general, not just yeah or nay, but if there were
18 changes that you believe should be made.
19 **MR. YOUNG:** Okay.
20 Mr. Jeffries.
21 **MR. JEFFRIES:** I'm going to go with Mr. Shimek
22 first and then I'll speak after he --
23 **MR. YOUNG:** Well --
24 **MR. SHIMEK:** My --
25 **MR. YOUNG:** You're going to have to come up to the

Page 163

1 podium and identify yourself.
2 **MR. SHIMEK:** Steve Shimek, with Monterey --
3 **THE REPORTER:** I can't hear you.
4 **MR. SHIMEK:** Okay. Thank you. The changes we
5 brought last time have be shown before, so there is
6 nothing new there.
7 **MR. JEFFRIES:** Mr. Chairman, just in response to
8 comments from Board member Delgado, and it's pretty
9 much what Board member Johnston said. It is
10 appropriate for Board members in deliberation to talk
11 about changes to the Order, to be responsive to
12 comments, and it's part of the delivery process. So
13 that's expected. It isn't a question of up or down on
14 one alternative or the other.
15 **MR. YOUNG:** Mr. Jeffries.
16 **MR. JEFFRIES:** This is a public hearing, and I
17 encourage the Board to listen to the rest of this
18 because I think it's important. In the changes, I
19 don't see, and I haven't looked at all of it in detail,
20 but it looks like there is some changes that may be
21 considered, but I would like to hear them all in
22 detail.
23 **MR. YOUNG:** Okay.
24 **MR. JEFFRIES:** And I encourage the Board to accept
25 these and let her present the rest of it.

Page 164

1 **MR. YOUNG:** Okay. I just want to make sure Staff
2 has an adequate amount of time to digest what's being
3 proposed, so we can have an educated discussion about
4 whatever you mean.
5 **MR. JEFFRIES:** I'm sure by the end of the day,
6 Mr. Chair, there will be a lots of things to consider,
7 other than that and for the Staff to digest and give us
8 their response.
9 **MR. YOUNG:** Okay. All right.
10 Mr. Thomas.
11 **MR. THOMAS:** Just a request of Ms. Dunham.
12 Do you have a red line strike out of your
13 former Attachment B that would help us see what the
14 changes are?
15 **MS. DUNHAM:** I do not. I'm sorry. I don't do it
16 that way.
17 **MR. YOUNG:** Okay.
18 Shall we proceed?
19 **MS. DUNHAM:** Okay.
20 **MR. YOUNG:** Okay. And just so you know, there is
21 21 and a half minutes left.
22 **MS. DUNHAM:** I will try.
23 Okay. So on this Part E. First, we
24 recognize that people have to have time in order to
25 indicate to the Board that they will select this

Page 165

A6028BD
PANEL HEARING MARCH 14, 2012

1 option, so we have identified that they would have
2 basically 60 days, which I think is -- is matches the
3 complete the Notice of Intent time frame. If it
4 doesn't match exactly, we can change that, but that was
5 the intent.

6 The second part is that in order to continue
7 to fall and remain under the third-party program, all
8 of the conditions in the Subpart E must be met. And
9 those are condition requirements upon third-party as
10 well as the Discharger and also ultimately the
11 Discharger is the one responsible and which is one of
12 main concerns that the Staff report often had was,
13 well, who's responsible for the discharge of the
14 third-party. If a third-party doesn't do what it's
15 supposed to do, then the problem comes to the
16 Discharger and, therefore, they are responsible. And I
17 will just add that that is the process of how it works
18 with Region 5. I think it's important for this Board
19 to understand that coalition and third-party encroaches
20 have been going on in Region 5, since 2003. Those
21 approaches have been upheld by the State Water Board in
22 a Presidential Order, and they do not require an
23 individual reporting, so just keep that in mind, as we
24 go through this.

25 So first, within the first six months a

Page 166

1 third-party that is going to administer this program,
2 would basically need to provide an application to the
3 Executive Officer for approval, and there are some
4 criteria here in order for the third-party as to be
5 what they need to be -- meet.

6 First, they have to clearly show to the
7 Executive Officer, and this is Subdivision B1
8 of Roman Et1, that the ability -- that they have the
9 third-party to carry out these responsibilities. So
10 it's not any fly by night group. It's not just, you
11 know -- it's got to be a credible group or organization
12 that's going to be able to take on the
13 responsibilities. We believe that that is important.

14 That, two, this new third-party is some type
15 of either a legally defined entity or working towards a
16 legally defined entity. So there is some, you know,
17 obligations and professional obligations to assure
18 accountability, or that there is some type of
19 memorandum agreement to an organization.

20 Three, if there is any subsidiary group,
21 that's a part of this, then they need to comply with
22 all the same provisions, as well.

23 Next, the third-party has to show what their
24 government structure is -- and I will note these
25 requirements, I didn't make them up -- these come from

Page 167

1 a long-term Irrigated Lands Program Proposal for the
2 Central Valley Region. So these are basically
3 reflective of what the Central Valley is looking into
4 and doing in requirement of observed third-parties.

5 The next requirement, after the government
6 structure, is that you have to show that you have
7 developed a Technical Advisor Committee and that that
8 Technical Advisory is capable of helping the
9 third-party to develop the content of the auditable
10 program, and throughout the whole complete independent
11 audit process.

12 The third-party also has to develop a Public
13 Advisory Committee. It is something we have talked
14 about previously, in order to provide inputted feedback
15 to the third-party, and that's a key provision, and
16 that Public Advisory is Ag, its regulators, its
17 Monterey County Water Resources Agency, its Public
18 Health. It's whoever may be appropriate as another
19 stakeholder to ensure the transparency accountability
20 during the process.

21 Two, then in Subdivision t2, we actually give
22 the Executive Officer 30 days to approve the
23 application for the third-party. If -- you know, if
24 the Executive Officer of the Staff thinks 30 days is
25 too short, we will have no problem extending it, but we

Page 168

1 know we're on a vigorous time frame, and we wanted to
2 keep timing aggressive, in order for the third-party to
3 get formed and start to develop in as quickly a time
4 frame as possible.

5 Then, six months later, that third-party,
6 that's been approved by the EO, has to basically submit
7 their work plan, which was a part of the Attachment B,
8 but we have some more classifications as to what has to
9 be in that work plan. They have to have developed an
10 audible time plan. So they're going to create an
11 electronic template for growers to fill out all of it
12 to be audited for the independent audit program with
13 all the appropriate information. They have to
14 absolutely explain what that independent audit program
15 structure is, and how it would work. All this goes to
16 the Executive Officer for approval. They need to
17 propose here a new addition -- for those of you wanting
18 to know where the new addition goes -- that there is a
19 specific template for nutrient management. We
20 understand the Board's concern with respect to
21 nutrients and nitrates, and we think it's important
22 that we have our growers, specifically, in nutrient
23 management so included the fact that they need to
24 develop a template for nutrient management, that is
25 then reported to the third-party.

Page 169

A6028BD
PANEL HEARING MARCH 14, 2012

1 That there is a process for prioritizing for
2 practice and practice evaluation. That means taking
3 the highest risk farms, as determined from the
4 templates in the nutrient management program and
5 determining which ones are at the highest risk, so we
6 can go forward and actually evaluate their practices on
7 their farm in order to determine if they're effective.
8 And with that, we are also, in a new addition, is that
9 with that, every farmer, would have to have one
10 representative soil sampled, in order to indicate with
11 respect to, you know, residual nutrient levels within
12 the soil, in order to help us determine risk.

13 Then there is, of course, the Practice
14 Effectiveness Evaluation Program. We think this is
15 absolutely key -- am I on the right slide? Sorry about
16 that -- that we think this is a key provision, because
17 it clearly, actually starts evaluating the programs the
18 third-party evaluates, the Effectiveness and Management
19 Practices, in order to determine which ones are working
20 and which ones aren't, so we can better help growers,
21 whether it's big growers or little growers, make
22 changes to their operations, in order so they can be
23 more effective.

24 And we will all learn from that. And with
25 that reporting, we also need to identify who are the

Page 170

1 enrolled growers so we can make sure your list at the
2 Water Board matches our list, so people aren't lost in
3 the shuffle, somewhere, saying that they notified you
4 60 days later, but they never enrolled as a
5 third-party. So it's important that we make sure that
6 we keep everybody on it.

7 We then have the end reporting requirements,
8 which we talked about previously, with some new
9 additions, in order to make it more robust. We, of
10 course, have that you have to continue to audit at
11 least 20 percent, and I want to say farms. There was
12 some discussion as far as auditing growers, auditing
13 farms. One grower may have three farms. We are not
14 saying that the grower may get one part out of three
15 farms get audited. All three farms have to be
16 audited. So it's an important distinction that in
17 order to know if it's 20 percent of the farms, at a
18 minimum, likely the program is going to have to be
19 doing 25 percent per year, in order to make sure to get
20 to every farm within the term of the Order.

21 Also, the end report with the summary of
22 independent auditor reports, and the summary report of
23 the number of growers and farms participating, the
24 number of growers and farms that fail the audit, and
25 the summary of corrective actions taken by growers.

Page 171

1 There would also be a risk self-assessment summary that
2 takes the data from the farms and tries to capture the
3 types of risks that we find within the farms, so the
4 Regional Board has more information, and we all have
5 more information.

6 There are Farm Water Policy Plan Summaries.
7 This would be taking up farm water quality from a
8 template and providing some summaries to the Regional
9 Board with respect to what actual practices were being
10 implemented on the farm and which ones aren't.

11 Most importantly, and each annual report, the
12 Regional Board receive a list of those participants who
13 are in good standing and those that are not. And I
14 have to be honest, this is something that the Central
15 Valley Board and their third-party program really
16 wishes they did have. They don't even have this much
17 of an individual reporting requirement. We do believe
18 that it's important, and we provide this so the
19 Regional Board knows who in the third-party continues
20 to be working in good faith and moving forward.

21 All of this would be spelled out in the work
22 plan to the Executive Officer and the Executive Officer
23 would make the determination. And I would imagine
24 there would be some collaboration back and forth as to
25 the robustness of the program being proposed, in order

Page 172

1 to approve this program as the third-party program.
2 There is, then, a subsequent report within
3 three years, with respect to the practice evaluations,
4 because we need more than one year to really determine
5 if the practices are effective. After three years of
6 doing it, there would be a practice evaluation.

7 So now, then, there is also -- here are some
8 new things, as well. Actually, I don't think this is
9 new, but anyway, the Discharger has to also continue to
10 comply with the monitoring requirements, which are
11 still within the Order, surface water, as well as
12 groundwater. Obviously, not the individual surface
13 water monitoring requirement, but the cooperative
14 surface water, receiving water monitoring, and the
15 groundwater. That is a condition of the maintaining
16 eligibility for the program.

17 The Discharger obviously has to make sure
18 that any information requested by the third-party, they
19 have to provide it. If they're not going to cooperate
20 with the third-party, then it doesn't do us any good,
21 and they will no longer be eligible for the
22 third-party. They would be told -- their name would
23 be -- a letter would be sent to the Regional Board
24 saying grower x, y, and z is no longer a participant in
25 the third-party or is not providing appropriate

Page 173

A6028BD
PANEL HEARING MARCH 14, 2012

1 information subject to the Draft Order as proposed.
2 And here, Number E is probably one of the key
3 provisions changes with respect to trying to
4 acknowledge, or at least respond, to some concerns
5 expressed by Staff, and that's with the respect to the
6 confines of Water Policy Standards.
7 So we have drastically changed the language
8 here, and it basically now requires Dischargers to
9 implement Water Quality Management Practices, as
10 identified through the audit process or even, as
11 necessary, in order to improve and protect water
12 quality and to achieve compliance with the Water
13 Quality Standards.
14 Recognizing the time schedule for ten minutes
15 that we've been talking about, I'll make this short.
16 The next thing would be in the development of
17 the third-party, the Executive Officer denies a
18 third-party, we have built in a provision that would
19 allow the third-party to go to the Board, at the next
20 reasonably available meeting, to see if the Board
21 agrees with the Executive Officer's determination or
22 not.
23 And, finally D, failure by anybody, whether
24 it's the third-party or the Discharger, will cause
25 those Dischargers and that third-party to no longer be

Page 174

1 eligible. That's the catchall provision to make sure
2 that everybody does what they're supposed to be doing.
3 That's it. I tried to simplify it to make it easier to
4 understand.
5 Going forward. So on Paragraph 61, Page 25,
6 the changes here are, again, to recognize if there is a
7 party that the Board chooses to go that way, then we
8 need a termination provision in order to allow those
9 that if they want to terminate or if they decide they
10 no longer want to participate in the third-party, what
11 they need to do. So this is it.
12 So we have to Notice the Regional Board and
13 then be subject to Part G, unless they're no longer in
14 Tier 2 or 3, then they would be subject to Tier 1.
15 Paragraph -- new Paragraph 82. Um, this
16 would be new language that, basically, provides for
17 time schedules for water quality standards instead of
18 the absolute language that currently exists, we would
19 recommend that there be included time schedules that
20 may be extended, but at the first outset would require
21 that discharges from Agriculture and is broken up into
22 three categories: There's discharges to surface water,
23 excepting those to tile drains, Discharge from tile
24 drains, and then discharges to groundwater.
25 And, basically, we are proposing that Ag will

Page 175

1 try to meet one quality. Make sure that their
2 Dischargers do not cause Water Quality Standards to be
3 exceeded with an eight-year surface water, 15 years for
4 tile and drain, and 15 years for groundwater. Now, of
5 course, as we all develop more information with ADA, it
6 is better to find what the appropriate timelines are.
7 You know, we are all just kind of trying to go based
8 upon what we know, when, at this point in time, there's
9 a lot more to learn.
10 That is what we currently propose with
11 respect to time frames or time schedules.
12 And Paragraph 82 and paragraph -- is again a
13 continuation of those. I'm starting to run out of time
14 here, so I'm going to try to go right along without --
15 hopefully, not to lose the court reporter.
16 Paragraph 82 is your existing time schedule
17 language and, basically, it clarifies the application
18 of the time schedules that we proposed.
19 The last couple of changes, I do propose
20 deleting Paragraphs 84, 85, and 86 primary -- and
21 Paragraph 87, primarily because I don't know that
22 "effectively control" is a legal standard. Having the
23 requirement says that a Discharger must effectively
24 control individual waste discharges, to me, is not a
25 legal standard, is not a type of Water Quality

Page 176

1 Standard, it's not a type of management practice. It's
2 a statement that I'm not even sure how one would
3 continue or determine compliance. So I suggest
4 deleting this.
5 Table 4, as we talked earlier, we've got --
6 Table 4 really isn't a time schedule and, I believe in
7 the Staff Report, it says that Table 4 is not
8 enforceable. It would be used by Staff to determine
9 discretion and enforcement; however, even with that, we
10 think it's important to make important changes in order
11 to recognize the election opportunity with Part E,
12 should the Board decide to adopt it.
13 And lastly, this big, really long, long slide
14 and, again, my apologies. This is the groundwater
15 cooperative paragraph that appears in all three MRPs
16 and this language basically is Staff's language. We've
17 added some changes in order to allow it to be a
18 practical alternative. One, we have identified that
19 there may be other types of qualifying cooperative
20 programs that might want to try to see if it fits into
21 the Regional Board's program. All would still have to
22 be the objectives. All still subject to the Executive
23 Officer's approval.
24 The last parts in red, basically, put forward
25 a process in order to allow it to happen. It allows

Page 177

A6028BD
PANEL HEARING MARCH 14, 2012

1 folks to elect this as an option and gives a year in
2 order for this option to be -- to come forward and
3 develop and approved by the Executive Officer. Without
4 these changes, we are concerned that the Staff
5 Alternative is an option with no limitation or with no
6 availability, so we were hoping that these changes
7 would make it a viable option for those who want to try
8 to put together a Cooperative Monitoring Groundwater in
9 lieu of the Individual Groundwater Monitoring
10 requirements that currently exists, but they would have
11 the option. We haven't made any other changes to the
12 groundwater monitoring requirements.

13 Those are the end of my suggestive changes.
14 In the interest of time, I'm going to skip over -- I
15 have some slides that have comparisons that we can go
16 into, but I'm going to go -- one is a timeline of
17 comparison. There's been some concerns that the Ag
18 Alternative is going to take too long and, I believe
19 there was some question and answer with respect -- that
20 went out yesterday talking about time frames. So we
21 wanted to provide just a side by side comparison of the
22 time frames within the Draft Order as compared to the
23 time frames if the Board was to adopt the Ag
24 Alternative. So, you know, obviously the requirements
25 are different, but the time frames show that we are

Page 178

1 trying to put forth an Ag Alternative that has a very
2 aggressive timeline and that's the first, you know,
3 there were 16 days from you making the election. Six
4 months you have the EO, hopefully, looking at an
5 application. You have, then, the EO approving it by
6 October of 2012. It's not very far from now. So we're
7 not talking a long time here trying to get this up and
8 running.

9 Next, we have a question, you know, we have
10 six months after the Notice of Applicability is issued,
11 assuming that the EO took 30 days, we are talking by
12 May of next year, you'd have the third-party up and
13 going, and the audits beginning. You, then, would have
14 your first set of audits by May 14th of 2014, which is
15 before you start getting reports as far as nutrient
16 balance ratios under the Draft Order. You would also
17 have your first Practice Effectiveness Evaluation
18 Summary by May of 2016, which is before you start
19 getting the Water Quality Buffer Plan. So we do think
20 that this is aggressive and we do think things are
21 going to happen on a very quick time frame.

22 I want to go quickly into the legality of the
23 Ag Alternative. So, you know, there's been a lot of
24 discussion, and I want to say that, and especially with
25 respect to individual reporting, there is nothing for

Page 179

1 the Water Code that requires individual reporting.
2 Water Code Section 13269 clearly discusses the fact
3 that waivers can be for a type of discharge and the
4 monitoring provisions of 13269 specifically say that
5 monitoring can be done individually or cooperatively.

6 The Central Valley Board Program that has
7 been going on since 2003, and as it's being proposed to
8 be changed here within the next year, would not require
9 individual reporting at the type that is discussed in
10 this Draft Order. It may be that Staff here decides
11 they found it the most effective way toward them, but
12 that is a completely different question as compared to
13 whether it is legal.

14 Summary reports are often done within this
15 type of a program. And, again, the State Water Board
16 has approved a coalition approach, the Nonpoint Source
17 Policy encourages a coalition approach, and therefore,
18 there's no legal impediment to adopting this -- our
19 Alternative today that would include summary reporting,
20 and not individual reporting.

21 I also want to remind you that I think
22 earlier there was a slide, with respect to the
23 legislative intent of Porter-Cologne. Well, there is
24 another provision in that same legislation that also
25 clearly says, it's the Regional Board's obligation to

Page 180

1 regulate to attain the highest water quality, which is
2 reasonable considering the law of demand. I think the
3 drafters of Porter-Cologne were, frankly, brilliant.
4 When you look at the policy, the statute as a whole, it
5 talks about balancing and reasonableness and when you
6 look back at all the legislative history that goes
7 along with it, and I read it all, everything was about
8 balancing all the different needs to be placed upon the
9 water. Not one goes over the other. It's balancing
10 all of them, and everything that we do, you do as the
11 Regional Board, you need to make a balancing
12 determination with respect to all the different needs.

13 So I would also say, to you, that, you know,
14 it is your job to determine the validity of the
15 third-party, and it's not determining whether, yes, our
16 proposal is different than the Draft Order. Yes, it
17 does remove some of the individual requirements, which
18 is why we're proposing it. There are, I think, some
19 unfair comparisons that say, but it has a different
20 standard for those under the third-party versus those
21 not under the third-party. That's the idea. That's
22 the purpose of it, is to create a different standard
23 that, frankly, we think provides and gets to better
24 water quality sooner than the program as proposed
25 within the Draft Order. And you have to ask, do you

Page 181

A6028BD
PANEL HEARING MARCH 14, 2012

1 think it's consistent with the Water Code, the basic
2 plan, the Nonpoints Source Policy and State Board
3 Orders. I would absolutely contend that it does and
4 that it is consistent. As I noted, some of the State
5 Board Presidential Orders and other programs that are
6 very similar to what we've talked about.
7 And, again, this is -- it is a different
8 standard, it is not a less stringent standard. And,
9 again, one of the other criticism we talked about does
10 it required compliance for water quality standards?
11 Yes, it does. We actually made some significant
12 changes in trying to address that concern of the Staff,
13 and, of course, we are suggesting some time schedules
14 that don't currently exist.
15 Does it protect sources of drinking water?
16 Yes, we believe it does, or will start working in that
17 area by calling out the need for nutrient management,
18 working with the growers and technical advisory
19 committee to make sure that that occurs.
20 I will wrap it up, I'm on the last couple of
21 slides. We talk about all the reporting elements and
22 the time frames and the conclusions.
23 **MR. YOUNG:** Okay. Time is up.
24 **MS. DUNHAM:** Does that still leave me the five
25 minutes?

Page 182

1 **MR. YOUNG:** There is no five minutes left. Okay.
2 The question I have for you, Ms. Dunham, does the
3 current Region 5 Order allow for reporting to a
4 coalition and not directly to the Water Board? You
5 said something was being proposed, but I'd like you to
6 clarify that. Who is proposing what and what currently
7 exists?
8 **MS. DUNHAM:** What currently exists in Region 5,
9 actually is even less than what your 2004 Order has.
10 Under the Region 5 Orders, people don't even
11 file Notice of Intent with the Regional Board, they
12 file with the coalition, and the coalition then tells
13 the Regional Board what parcels are covered within that
14 program. There is no direct reporting currently
15 between the individuals and the Central Valley Regional
16 Board. And I will say that this has not hampered
17 Region 5's ability to bring enforcement actions. They
18 have brought several enforcement actions against
19 individual growers who have had excessive sediment
20 leaving their property. And a large part is
21 coalitions, but basically it had concerns with growers
22 within their coalition who have suggested the Regional
23 Board do something with respect to enforcement.
24 **MS. McCHESNEY:** Can I just add to that the Region
25 5 Order is.

Page 183

1 **MR. YOUNG:** Speak up.
2 **MS. McCHESNEY:** The Region 5 Order authorizes the
3 Executive Officer and the Board to request our plans
4 that are then turned into the Regional Board, so that
5 is a difference than the proposal of Ms. Dunham. The
6 plans are actually submitted to the Regional Board.
7 **MS. DUNHAM:** There is no generic requirement that
8 that be done. That is -- may be a discretionary
9 element --
10 **MS. McCHESNEY:** Yeah, I agree.
11 **MS. DUNHAM:** -- that each grower --
12 **MS. McCHESNEY:** I just wanted --
13 **MS. DUNHAM:** -- it isn't a requirement that each
14 grower report to the Regional Board.
15 **MS. McCHESNEY:** I just want to make sure that the
16 Board knows that there's one, but you proposed to
17 delete the requirement that farm Plans be submitted to
18 the Regional Board, Region 5's Order --
19 **THE REPORTER:** Can you hold on for a second. I
20 just need to change my paper. I just ran out of
21 paper. One second.
22 (Brief Interruption.)
23 **MS. McCHESNEY:** Okay. I just want to make sure
24 that it's clarified that Ms. Dunham proposes to delete
25 a requirement that people turn in their Farm Plans to

Page 184

1 the Regional Board, but the Region 5 Order allows the
2 Regional Board to --
3 **MS. DUNHAM:** But right now, Region 5 doesn't even
4 require the zone.
5 **MR. YOUNG:** Is this Region 5's first Ag Order?
6 **MS. DUNHAM:** It's a convoluted process, but they
7 started in 2003. It's been amended a few times, and
8 they are now in the process of going from their base
9 program that's been in place since 2003, with some
10 tweaks along the way, to what we're calling -- what
11 they call, the long-term Irrigative Lands Program, and
12 they're in the process of developing WDRs for different
13 coalitions at this moment in time.
14 They did a very long facilitated stakeholder
15 process with a professionally hired facilitator and
16 came out with a long-term Irrigated Lands Program.
17 They did an Environmental Impact Report that is now
18 just starting to come forward with those changes, and
19 there is no -- there is no farmland specific
20 requirement in Region 5, whether, you know, the Board
21 may request one of some individuals, which this Board,
22 anybody can do, any Board can do, under 13267
23 Authority. There is no specific requirement that says
24 every grower in Region 5 must prepare a Farm Plan and
25 submit it to the coalition or even the Regional Board.

Page 185

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. YOUNG:** Okay. All right.
2 Mr. Johnston.
3 **MR. JOHNSTON:** On the subject of Region 5 -- I
4 don't have it here, I tried to pull it up -- as I
5 recall, it does require the coalition to report to the
6 Board the management practices that are being
7 performed, and the specific areas where they're being
8 performed, the specific geographic areas, and then if
9 the Board then has questions about the adequacy, they
10 could request a management plan from the individual
11 Dischargers. Because it seems like there's a higher
12 level of reporting, and it seems like what's being
13 proposed here is summary reporting, further down the
14 road, later in the process, I think that's the little
15 difference between --
16 **MS. DUNHAM:** I actually --
17 **MR. JOHNSTON:** -- as long as we're citing
18 Region 5.
19 **MS. DUNHAM:** Well, I would disagree with that
20 characterization, I'm sure, and Mr. Thomas who
21 represents one of the specific coalitions could
22 probably help us download that as well, but how Region
23 5 Order works is first if there's trigger. And right
24 now, the Region 5 is surface water only and is specific
25 to surface water only. The coalitions conduct surface

Page 186

1 water monitoring. If there is an exceedance of a Water
2 Quality Standard, then the coalition, basically, might
3 be triggered, the EO says this is significant enough,
4 may be required to prepare a management plan. And part
5 of that management plan requires the coalition to go
6 out and discuss and survey the management practices
7 within that watershed or that subwatershed area. And
8 then the coalition has to develop and report back with
9 respect to this management practices in a summary
10 fashion. I don't believe they're parcel specific.
11 **MS. JOHNSTON:** No farm plans --
12 **MS. DUNHAM:** No farm plans -- not parcel
13 specific. The coalition does all of that. In fact,
14 individuals in the coalition that I work with, will go
15 in and greet and meet with every grower, but, again,
16 that's part of their management plan. That is done
17 within the development of the management plan. So an
18 all -- that report, again, is summary, if the
19 management plan has been triggered.
20 **DR. HUNTER:** Can I ask a quick follow-up?
21 **MR. YOUNG:** Go ahead.
22 **DR. HUNTER:** So if there is an exceedance, but the
23 data then, or the actions that are taken with the
24 watershed or subwatershed level, then how do you
25 connect the source and the hot spot with this broad

Page 187

1 approach?
2 **MS. DUNHAM:** The coalition actually -- and my --
3 the coalition that I work with actually, especially the
4 pesticide exceedance. They'll go to the county, the
5 County Ag Commissioner. They will find out who filed
6 pesticide use reports for that specific pesticide, and
7 applied it at that time period, and they'll go focus
8 and talk to that individual and say, "Hey, what are you
9 doing? Did you do it right? Did you do this? Did you
10 control this?" To make sure that next time, you know,
11 to see if they might be the person, or to make sure
12 their implementing appropriate management practices.
13 So they kind of specific, with respect to use of
14 pesticide use reports in order to get at that. To go
15 to the watershed in order to keep -- point in on the
16 individuals that it might be.
17 **DR. HUNTER:** So, in the context of looking at
18 subwatershed area with four growers, would all four
19 growers be approached and asked to do the same
20 process?
21 **MS. DUNHAM:** Yes, yes.
22 Well, if all four growers had applied
23 pesticide concern at that point in time, yes, all four
24 growers would receive a visit and would be talked to
25 about this with respect to --

Page 188

1 **DR. HUNTER:** And what if all four growers said,
2 gee, I don't think I'm doing anything that's
3 contributing to that? Is that the end of it, or --
4 **MS. DUNHAM:** Well, once a management plan is
5 developed, there's continued follow-up monitoring, and
6 more specific monitoring to that management plan, so
7 you can see whether people are actually doing what
8 they're supposed to be doing and eventually there would
9 be -- if you think someone is in complete violation of
10 the coalition they would probably say something to the
11 Regional Board, hey, you know, we've got some folks
12 here that aren't necessarily implementing management
13 practices.
14 **MR. YOUNG:** Mr. Johnston, were you done with your
15 questions?
16 **MR. JOHNSTON:** For the moment.
17 **MR. YOUNG:** Okay.
18 Mr. Jordan.
19 **MR. JORDAN:** Gentlemen, I'm just curious, I don't
20 know about heating time either, so if we used one of
21 these color coded maps that you've put up there, would
22 it be apples to apples in comparison to the nitrate
23 issues here and the toxicity issues?
24 **MS. DUNHAM:** You know, I'm sure that there might
25 be some apples to apples in different hot spots,

Page 189

A6028BD
PANEL HEARING MARCH 14, 2012

1 right. You know, I think you've got to look at
2 everything on a constituent by constituent basis, and
3 there are definitely some areas in Region 5 that have
4 higher issues with respect to toxicity and some that
5 have higher issues with respect to nitrates. I don't
6 know. I can't answer that directly, but there are
7 areas in the Valley that have serious concerns.
8 **MR. JORDAN:** While you're saying that, as a
9 credible alternative, that might be a reference point
10 to provide in the future, just because, you may say, I
11 want to look at it side by side, but the visual picture
12 of all the impaired sites up on a PowerPoint
13 presentation is a pretty chilling factor in this
14 region.
15 **MS. DUNHAM:** Thank you.
16 **MR. YOUNG:** Okay. Thank you very much.
17 All right.
18 **MS. DUNHAM:** And I believe we do have some extra
19 copies, thanks to our colleagues.
20 **MR. YOUNG:** Wonderful. Is there anybody else in
21 the audience that wishes a copy of Ms. Dunham's
22 presentation?
23 Okay. Dr. Barbeau, you are up next. And if
24 anybody doesn't get a copy that wishes one, would you
25 please let us know, and I'll make sure that a copy gets

Page 190

1 to you.
2 Dr. Barbeau, go ahead.
3 **MR. BARBEAU:** Okay. My name is Brad Barbeau. I'm
4 a member of the faculty of Cal State University
5 Monterey Bay, and one of authors of the Barbeau and
6 Mercer Cost Study.
7 I'll try to make this brief.
8 There are three costs studies, if you will,
9 sitting out there right now. There is an Appendix
10 document, a Waiver document that was done by the Staff,
11 there's the Barbeau & Mercer study of the cost of the
12 Ag Waiver, and then there are some numbers out there
13 also about the Ag Alternative. And primarily, what I
14 want to say about those is first of all the purpose of
15 our cost estimate was to give growers an estimate of
16 the cost of the proposed Ag Waiver and the Ag
17 Alternative. It was not intended to be compared
18 directly with the Staff Study. There are major
19 differences between the objectives of those studies and
20 major differences in the data sources for those
21 studies. So I think the work has been done trying to
22 compare those two. It may be not the right way to
23 approach them. And I would say the same thing with the
24 Ag Alternative. Rather than viewing them as competing,
25 we would suggest that each of these reveals different

Page 191

1 parts of the elephant, so to speak, and provides
2 additional information that can be used and should be
3 used in understanding what the whole elephant looks
4 like.
5 Our study tried to estimate the cost of
6 compliance, and, by the way, this was a very definite
7 moving target, as we were looking at it. We started
8 with the March documents, and in the middle of our data
9 collection, the May document came out. We tried to
10 adjust as best we could, but were not able to entirely
11 incorporate and there have been changes since then,
12 also.
13 Our data source was primarily grower
14 interviews, so that's -- that's where we got our
15 information from. So there's a good deal of
16 uncertainty in these cost estimates, and the
17 uncertainty is coming from several places, one big --
18 one being that we were all working with a moving
19 target, as Staff was working to adjust the -- their
20 proposal. And, also with the Ag Alternative, we were
21 working with a very early version of the Ag
22 Alternative. As you know, a lot of work has been done
23 since then.
24 So it is our feeling that doing responsible
25 regulation requires that a complete economic impact

Page 192

1 report, that would include cost and losses to the
2 growers, to the taxpayers, and looking at the indirect
3 and induced impacts -- economic impacts of the
4 regulation, and it would also look at, in a systematic
5 way -- this has not been done in any systematic way, at
6 all, and it's not easy to do -- the gains and benefits
7 of the regulation. That would be a complete economic
8 impact study, and as Kaye suggested to me in a
9 conversation earlier today, if you're interested, we
10 would be very interested in working on that, if you
11 would like that study to be done. That's in the
12 future.
13 I think the conclusion that I would want to
14 say and leave you with here is that I believe that this
15 regulation absolutely has the potential to be a game
16 changer. It changes the rules of the game and it's
17 going to cause an adaptive response, the outcome of
18 which we do not know.
19 The questions about will growers go out of
20 business or not? This is going to impact growers.
21 It's going to impact what crops get produced. It's
22 going to impact land use in ways that I don't think
23 anybody has a crystal ball to exactly know what the
24 ultimate outcomes are going to be.
25 So if we wish to preserve agriculture in the

Page 193

A6028BD
PANEL HEARING MARCH 14, 2012

1 region and also, also achieve our desired water
2 quality, this requires cooperative solutions, with
3 cooperative implementation.
4 **MR. YOUNG:** Thank you. Okay.
5 **THE REPORTER:** Mr. Chairman, can we have a quick,
6 little break?
7 **MR. YOUNG:** Sure.
8 **THE REPORTER:** Just five minutes.
9 **MR. YOUNG:** Five minutes is fine.
10 (Brief recess.)
11 **MR. YOUNG:** Anyone locally who needs to get out of
12 here at a certain time, I'll give those people two
13 minutes each to address us now.
14 Greg Pepping gave me his card. He can come
15 forward now. And he did say he submitted a speaker
16 card. Okay.
17 **THE REPORTER:** Mr. Chairman.
18 **MR. YOUNG:** Yes.
19 **THE REPORTER:** If you could have them, for me --
20 the people that are coming up there, if they could
21 please state their name and spell their last name, for
22 me, so that I have it on the record. I would
23 appreciate it.
24 **MR. YOUNG:** Okay. Dr. Hunter, what we are doing
25 is that there are some people that need to leave so in

Page 194

1 exchange for going down, they have two minutes.
2 **DR. HUNTER:** Okay.
3 **MR. YOUNG:** All right, Kent Hibben, Ethan Allan,
4 Charles Whitney, George Cutman. Okay. Let's go.
5 **MR. PEPPING:** My name is Greg Pepping.
6 P-e-p-p-i-n-g. Executive Director of The Coastal
7 Watershed Counsel. Thank you for taking my comments.
8 The Coastal Watershed Counsel is a nonprofit
9 based in Santa Cruz. We've been around since 1995.
10 Our mission is to preserve and protect coastal
11 watersheds through stewardship, education, and
12 monitoring. Our monitoring work includes Snapshot
13 Dave, First Flush, Urban Wash, effectiveness assessment
14 on restored and constructed wetlands, as well as
15 organic and sustainable current practices. Now for the
16 contacts so that you have background from which my
17 comments on coming.
18 We acknowledge that the Water Board Staff has
19 exercised due diligence in the process to date and the
20 net result of that process is what you're considering
21 voting on today, that seemed to polarize many people,
22 whether one considers themselves, a environmentalist, a
23 grower, or neither, you folks have a tough one today,
24 and if you pass this Draft Order, the way I understand
25 it, it likely will be appealed, litigated, and go to

Page 195

1 the State Water Board, perhaps, maybe to the Supreme
2 Court, and does not result in water quality
3 improvement. You do nothing, and you're accused of
4 kicking a can down the road and, obviously, that is not
5 improvement to water quality.
6 In my opinion, one middle ground that would
7 avoid litigation, more likely, and likely have one of
8 the best chances of improving water quality is so
9 middle ground, that is, approval of the Draft Ag Waiver
10 Order as is, with 90 days for Staff to incorporate
11 alternative proposals such as Marc De Los Huertos and
12 some other alternative approaches.
13 That's what I recommend that you do. I
14 encourage you to make a vote today, because I think
15 that's important. And I thank you for your work, I
16 know it's a challenging decision.
17 Thank you.
18 **MR. YOUNG:** Thank you for your comments.
19 Kent Hibbin -- have I pronounced the last
20 name correctly? Is he coming back?
21 Nathan Allen.
22 **MR. ALLEN:** Thank you, Mr. Chair. I actually got
23 someone to cover my evening commitment, so I'll stick
24 around and go when it's my turn later.
25 Thank you so much.

Page 196

1 **MR. YOUNG:** Charles Whitney? He left?
2 Okay. George Gutman? Mr. Gutman?
3 Okay. Mr. Martin.
4 **MR. MARTIN:** Thank you. My name is Bob Martin,
5 M-a-r-t-i-n.
6 Actually, I'm here today representing
7 Western Growers Association. They asked me to speak
8 for them today. And Western Growers is an association
9 of about 500 growers in the Central Coast Region,
10 including me, to express the comments made today by
11 Farmers for Water Quality, for The California Farm
12 Growers and Dr. Marc Los Huertos.
13 Instead of talking about the Valley of
14 Central Coast Ag Region, given the fact that I only
15 have two minutes, I decided to focus more on the Q and
16 A response that the Board had for Staff, in yesterday's
17 email that I saw, in particular Question Number 5
18 and is regarding groundwater.
19 And, Chairman, you mentioned something
20 earlier, kind of took a little wind out of my sails and
21 I wanted to maybe sure that everyone was on the same
22 plane with this.
23 In recent documents much emphasis is placed
24 by Staff's proposal needs to monitor nitrates in
25 groundwater. The Staff realized that monitoring these

Page 197

A6028BD
PANEL HEARING MARCH 14, 2012

1 levels in the coming years, is problematic and places
2 all farmers on a noncompliance mode.
3 How does the Regional Board intend on dealing
4 with this topic down the road?
5 Many farmers like myself are attempting to
6 tackle this problem, and fully intend on minimizing the
7 nutrient input to increase or eliminate nitrates in the
8 groundwater. Immediate implementation is possible, but
9 the ensuing results although inevitable are extremely
10 slow in coming. In other words, it's going to get
11 worse before it gets better. And even a Staff member,
12 Matt Keeling, acknowledged several decades, possibly.
13 I believe it would be more effective to
14 measure the documentative efforts of these farmers,
15 rather than just the nitrates in the groundwater. That
16 will be the only true measure of what will occur in the
17 far future, not just the next few years.
18 I also take serious offense to the way the
19 Staff opted to classify farmers in a Tiering systems,
20 stating that large operations have the potential to
21 pollute as the leading criteria for selection. The
22 sheer size of our operation is the only thing that
23 allows us to spend the needed resources on accurate,
24 scientific equipment to accomplish goals of improving
25 the quality of groundwater.

Page 198

1 **MR. YOUNG:** Mr. Martin your time is a up.
2 **MR. MARTIN:** If I was a small farm those resources
3 would be extremely limited or nonexistent.
4 **MR. YOUNG:** Thank you for your comments.
5 Okay. Dr. Jean-Pierre Wolff.
6 **MR. WOLFF:** I feel funny being on this side.
7 I am Jean-Pierre Wolff, W-o-l-f-f, and I'm
8 here representing myself as an agriculturist, a
9 Certified Sustainable Vineyard, and I have a few
10 observations and suggestions that I'd like to make.
11 I'll start with a little caption here that says, "It is
12 much harder to break old habits than it is to learn new
13 skills." And I think part of the discussions that
14 we're hearing and seeing in this is the fear of
15 changes.
16 My comments are going to be both on a macro
17 level and a micro level, so I'm going to give you some
18 20,000 foot observation, and some that are very
19 specific.
20 Firstly, I suggest that we really try hard to
21 keep the reporting as simple as possible. Efforts are
22 being made with the Notice of Intent to streamline it.
23 But I really feel we need to avoid using the analogy of
24 the tax code, because it's so complex that you have to
25 have a CPA to do your taxes. And I think it's so

Page 199

1 similar on all three Tiers to work in streamlining,
2 making it a little more simple, the process.
3 For example, I suggest, in addition to the
4 regulatory document, that we develop more templates
5 which are user friendly, and add to the regulatory
6 document a user friendly version, because, yes, a
7 regulatory document has to be written in a certain
8 legalese language, but it doesn't necessarily make it a
9 very easy document for a farmer. So I suggest that you
10 translate, a little bit, some of the regulatory
11 language into something that's a little more user
12 friendly.
13 The Cooperative Monitoring Program, I
14 think is very beneficial. Third-party groups, I think,
15 will inherently add some costs to the program, and I
16 think what you want to be cautious is not to add
17 another layer of administrative body, and further
18 distance yourself from the agriculturist.
19 Tier 1, 2 and 3, if I take the reporting of
20 data, I think you probably have close to 80,000 data
21 points between Tier 1, 2 and 3. And you've got about
22 2,000 in Tier 1. That's 15 points per. Tier 2 you
23 have 1500, um, that's -- that was 25 points per, and
24 then the balance is Tier 3. Well, that gets you right
25 to 80,000.

Page 200

1 Now, I know we talked about geotrack, but,
2 you know, geotrack is not a smart system. Geotrack
3 takes data, and it doesn't have a very sophisticated
4 problemistic software, trendy program, monte carlo
5 equations, et cetera. And I think the big question is,
6 it is very important to measure and get the
7 information, but what are we going to do with it? And
8 I think what we got to do with the information is make
9 progress in water quality.
10 So that brings me to the concern about
11 availability of Staff. Mr. Jeffries you asked the
12 question, do you have adequate Staff. The answer was,
13 yes. But we heard earlier, a recommendation to move on
14 with the Ag Order, and then we can start working on
15 other important issues. Well, the fact of the matter,
16 is that I do believe that administrating this Ag Order
17 is requiring a fair amount of Staff time, and you need
18 to assure yourself that you do have the Staff
19 available. That's not a criticism, at all, to Staff.
20 I think the Staff has done a very good job delving into
21 the issue. In fact, some people who argue too good of
22 a job, and others not enough, that's neither here nor
23 there. I think you have done a great job. And I think
24 Mr. Briggs, likewise, in managing the program, but if
25 we look at over 175 pages of the regulatory document,

Page 201

A6028BD
PANEL HEARING MARCH 14, 2012

1 you know, the EO is peppered all over the place. In
2 fact, if you do a word search, you will find probably
3 100 times EO, in terms of alternatives and other
4 proposals, et cetera. That's going to take time and
5 resources.

6 So my big concern is under the current budget
7 cuts and limited Staff, you do not want to set yourself
8 up for failure. As a Board, you know, the analogy is
9 that you're impacting a multi-billion dollar business.
10 So put yourself in the shoes of being the CEO and Board
11 member of a publicly operated company. And I don't
12 think as a Board member you would say, "Oh, Staff is
13 adequate." Okay. All right. Let's move on.

14 I think you would want to have a plan. So my
15 suggestion is you have, currently, a plan that is
16 basically a management plan, showing what resources
17 will be allocated to administer and implement this
18 program. And , therefore, assure that the
19 environmental side and water quality side and also for
20 the agriculturist, that we do have a successful story
21 at the end.

22 A couple additional comments is that the
23 water quality degradation has taken place over a long
24 period of time. Now I think we all agree there's a
25 legacy associated with it. And surface water probably

Page 202

1 can be mitigated, a lot quicker than groundwater, and
2 what I would suggest is that you consider the deadlines
3 that we have issued, and maybe have some deadlines and
4 milestones that are slightly extended. I'm not
5 suggesting 8 years and 15 years, as I heard earlier
6 with some of the improvements, but, you know, you do
7 have deadlines of 2014, for example, and we're in 2012,
8 first quarter is over. So I think, you want to give
9 yourself a little more elasticity there.

10 I think, concurrently, with the Ag Order and
11 the regulatory side, you need to take a holistic
12 approach to this. Regulation, by itself, will not
13 solve our problem. It's going to require regulation
14 collaboration, education, innovation, research and
15 trust. But with a caveat on trust and I'll paraphrase
16 President Reagan, "trust but verified."

17 I think education was originally a
18 requirement in the Ag Waiver, and now, it is
19 voluntary. There is a missed golden opportunity to
20 bring together a little bit more of the Ag community
21 here with some program. Comments that I heard, the
22 reason why education has been dropped, it was not very
23 successful in the Ag Waiver. Well, that's because
24 there was not a whole lot of effort put into developing
25 a good curriculum involving all parties. It's a missed

Page 203

1 opportunity to promulgate best management practice,
2 innovation, technology, new science, collaboration,
3 including environmental communities. So if we leave
4 the educational as voluntary, it's going to be a
5 hodgepodge of different parties having their own
6 interpretation.

7 Another point to make pertaining to the
8 importance of assuring that you have provided the right
9 amount of staff. Item 4, Figure 1, Page 7, which you
10 showed earlier on the slide, shows irrigated Ag having
11 the highest degree of water quality we have.

12 We got landfill, municipal and urban
13 stormwater, way to the right. That would tell me that
14 we need -- you need, pardon me, to put a lot more
15 effort in that area. And so there has been not
16 billions of dollars of grants that have been provided
17 to help agriculture, and so I think in this case it
18 would behoove you to consider committing the Regional
19 Water Board to allocating resources. Add up analogous
20 to Central Coast hydro modification control and low
21 impact development, when you have a whole specific set
22 up program to help assure or support the success of
23 these proposed Ag Waivers.

24 So, in summary, I think that parallel to the
25 regulatory language, there is a need to have a plan on

Page 204

1 how you're going to roll this ensure success, and I
2 would think -- and I can't speak for my colleague
3 agriculturists -- but you're going to have a lot of
4 help if people see this is not just about regulation,
5 it's also about working together to make progress.

6 One little item that I think perhaps should
7 be modified, is currently there is a requirement for
8 Tier 1 and 2 and 3, for groundwater sampling, to hire a
9 registered professional engineer, such an a hydrologist
10 or geologist to take the sample and take it to a lab.
11 You know, agriculturists routinely take water samples.
12 We know how to take water samples. We knew how to take
13 a sample in a cook bottle and take it to a lab. I
14 don't quite understand the logic in making that
15 requirement. Particularly since with your MPS permit
16 holders you allow them to take samples themselves. You
17 allow technicians in water treatment plants to take
18 samples. It doesn't have to be done by a
19 four-year degreed engineer. So I'm kind of missing
20 that requirement, and if you are concerned about the
21 chain of custody and proper protocol to take the
22 sample, well, there is your golden opportunity of
23 continued education, a short course on water sampling.
24 You get it done.

25 So I don't want to abuse the generosity you

Page 205

A6028BD
PANEL HEARING MARCH 14, 2012

1 gave me with the red light here, but I wanted to give
2 you a few views, and I apologize for my lateness in
3 giving you feedback, but as you know, this has been a
4 difficult position for me, under the current laws of
5 not having recused myself from speaking.
6 Thank you very much for your attention.
7 **MR. YOUNG:** Thank you. Okay.
8 Dr. Los Huertos.
9 **DR. LOS HUERTOS:** Thanks for being able to say my
10 name.
11 **MR. YOUNG:** I grew up in California. A little bit
12 of an easy thing to do. Well, no comment,
13 Mr. Jeffries.
14 **DR. LOS HUERTOS:** So my name is Marc Los Huertos,
15 L-o-s H-u-e-r-t-o-s. I'm a faculty member at
16 California State University Monterey Bay. I've been
17 working on water quality issues since 1992, in
18 particular, I've been working on the Penn State Buffer
19 strips and nitrogen removal of the buffer strips and
20 see how effective they work.
21 Then, recently, I just finished, almost
22 finished the contract manager looking at bioassessment,
23 bringing algae to the merit standards, which is a
24 really hard thing to do, and we just completed that
25 last year and -- or this year. And I think, I will

Page 206

1 have to say that after 15, 20 years of talking about
2 the problems of nitrogen, that I am actually quite
3 impressed that farmers that I interviewed during the
4 summer, to help them with all the things that they need
5 to do to improve water quality, I think it speaks to
6 the risk they've taken by hiring someone that's been
7 critical of them for a long time, and on some level
8 getting ready to propose a very scientific background
9 why nitrates standard may need to be met. They don't
10 like hearing that.
11 They also don't enjoy a lot of the
12 conversations we have with them, but it's been, I
13 think, one of the most provocative conversations I've
14 had with farmers in 20 years. I think it says a lot to
15 the seriousness of the region and the attention they
16 have to this issue with regard to water quality.
17 I also want to back up a little bit, on
18 another key experience that I've had, and although I
19 was not directly involved, a group of growers in Quail
20 Creek decided or worked with Mark at Restoration, Inc.
21 They did an independent and anonymous reporting of the
22 water quality coming off their farms. They had,
23 actually, a court Staff inspecting the farms and going
24 through their farm plans at the same time, and they had
25 a dramatic reduction in pollutants loads.

Page 207

1 To me, this was probably one of those
2 take-home messages of the 2004 Ag Waiver, was a
3 profound and successful program that could engage
4 growers in a way that had both a stick and a carrot, in
5 a way that allowed the growers to respond, in a way
6 that they could feel as if their laundry was hanging
7 out for everybody, in a way that they could address
8 water quality issues by installing, testing, various
9 management practices.
10 And, hopefully, you could see that I tried to
11 use that model to continue to develop and refine the Ag
12 Alternative Proposal with more detail. So my initial
13 proposal was to create a collaborative constant for
14 growers and technical advisor resources to improve
15 water quality based on reliable risk assessment.
16 And I will have to diverge here slightly. I
17 was actually quite surprised after Karen Worcester
18 talked for five minutes about the importance of the
19 Santa Maria Basin with serious water quality issues and
20 then to see Tier 3 growers the "most risk causing
21 growers" to be almost absent in that base of only three
22 or four points. I'm not sure how many, but
23 somewhere -- that's a very small number and, to me,
24 that speaks to the lack of reliability of the insuring
25 system. I think it's problematic and I spoke to that

Page 208

1 last year. I think it's based on assumptions about how
2 water quality moves, and, for me, as a scientist, I
3 find that that approach is not only turning into
4 superlative vice of this program, but it also sets a
5 target on some of potentially the most innovative and
6 capable growers that we have in our region, so I don't
7 want to belabor that point, but I think that, though,
8 the Staff presentation on that contrast of those few
9 things is a little bit symptomatic of the way the
10 Tiering system has been developed.
11 Second, I want to provide a public and
12 Regional Board evidence that growers are effectively
13 implementing management practices. I really like the
14 term, trust and verify. I think that's a key -- I
15 think that's a central component of what farmers need
16 to do and I have worked very hard with the growers,
17 driving up and down the coast, talking and meeting with
18 them to find out how far I could push or how far they
19 would be willing to go, in terms of verifying their
20 activity. And I think you'll see that they've come
21 very far, and I will say that they have created, on
22 some level -- I mostly facilitated conversation.
23 They've created, I think, one of the most provocative,
24 but progressive, water quality protection programs in
25 the country.

Page 209

A6028BD
PANEL HEARING MARCH 14, 2012

1 And, finally, to meet the California Water
2 Code, so it's -- on some level, it's a question of law
3 and a question of water quality. I believe that the
4 proposed third-party option is a robust mechanism to
5 improve and to promote water quality improvement.
6 I don't think that the Draft Order, as
7 currently written, will address and make tangible water
8 quality improvements. I do not believe that Draft
9 Order -- I do think the Draft Order and associated
10 reports are confusing. I think there are a lot of
11 internal conflicts, and, frankly, they're very hard to
12 figure out how to implement.
13 I think Kaye and Brad don't have the time to
14 talk about this at times, but trying to work with
15 growers and figure out what Tier they're in, was
16 extraordinarily difficult. It was confusing. It was
17 very hard to figure out. Especially when you're
18 talking about growers that are changing land tenancies
19 from small to large farms, their rents are changing,
20 and the structure of their actual properties of where
21 they are. Now, that is a subset of the growers, and I
22 understand that that's not consistent throughout all
23 growers.
24 Finally, the Draft Order, I think, does not
25 reflect the state forward engagement for the high-risk

Page 210

1 growers. So I'm going to go on. We're not going to go
2 there.
3 So the bulb growers begin by submitting a
4 farm plan. The idea of a farm plan is. It's
5 auditable. This is not the same as the farm plan that
6 was, historically used, that was very hard to figure
7 out what compliance meant.
8 The bulb growers, both, do a practice
9 effectiveness and an action plan on their farm that
10 independently audited 20 percent per year, minimum, a
11 third-party group or rank that prioritized growers, and
12 the idea is that -- I'm going to go through the report
13 here. There is no way I'm going to figure -- there is
14 a report on each one of these little steps. I want
15 to thank you for your circle -- I could copyright this
16 before you guys got there -- but that each step there's
17 a reporting, and I'm going to hustle here because I
18 think this is really important. That this is not
19 aggregate reporting in the way that the Staff
20 characterized it. That the most important thing that
21 you need to see as a Board member is -- are the
22 practices working, in terms of water quality?
23 And so, what I tried to do here is give you
24 an idea of what the reporting would look like. This is
25 slide 12 or something. Grower one, two, three, four,

Page 211

1 five and eight, you have all the raw data. It would
2 not be masked into some kind of average. You would
3 have the potential for risk, in terms of pollution
4 load, and hard, yucky colors, red is bad, white is not
5 so bad. And then at the bottom, an actual measurement
6 of the practice effectiveness. And the practice
7 effectiveness would basically be used to demonstrate
8 how well farms are doing. There would be associated
9 reports, in terms of lessons learned, what we could do
10 to implement better strategies, what we could do to
11 implementation, and probably the most important part of
12 this is that this is actually going to create a
13 capacity for farm and farmers to develop a program to
14 look at what research areas need to be developed to
15 promote water quality.
16 One of the fundamental problems in
17 agricultural research over the last, probably, 50 years
18 is they have been focused on yield, to the exclusion of
19 environmental quality. And this is -- even if the
20 University of California, they still have trouble with
21 this, and that's because their mandate is to make sure
22 growers are productive and making money and so the
23 growers are really stuck.
24 They don't have a dedicated fund to look at
25 research to test different management practices and so

Page 212

1 this program by collecting fees -- and the growers are
2 not excited about this -- it's 8 and 10 bucks an acre.
3 And half of those fees, approximately, will be use to
4 make sure that we develop a program that actually
5 improved water quality by testing the practices on the
6 ground, a regular yearly test. So things like, if we
7 wanted to focus priorities for one year or next, we can
8 focus on groundwater, for example, and look at leaching
9 and try to come up with practices that are really
10 better at preventing groundwater leaching. We can
11 prioritize by watershed. We can prioritize by some
12 groundwater basin. We can prioritize a specific toxic
13 or pesticide. We can even prioritize by repairing
14 restoration. And, at some level, I would be interested
15 in having a Staff helping us prioritize different kinds
16 of things to do every couple of years. I think that
17 would be a reasonable thing. I think there is -- and
18 we've spoken about this in the past.
19 There's a fair amount of distrust, and it's
20 going to take some time to build that trust back up and
21 I'm hoping that that's going to happen. I'd love to
22 see that happen.
23 **MR. YOUNG:** Mr. Jeffries.
24 **MR. JEFFRIES:** Well, you went through that pretty
25 fast.

Page 213

A6028BD
PANEL HEARING MARCH 14, 2012

1 **DR. LOS HUERTOS:** Yeah. I have 80 more.
2 **MR. JEFFRIES:** On your handout, you talked about
3 Draft Order will not be sold some Tangible Water
4 Quality equivalent. Can you expand on that a little
5 bit?
6 **DR. LOS HUERTOS:** Yeah. So it relies on a couple
7 of things. The assumption -- and I'm going to jump
8 right into the shoes of the Draft Order, because it
9 doesn't say what the assumptions are, per se. The
10 assumption is that we can use on-farm monitoring to
11 characterize water quality, and then use that to
12 prioritize which farms to visit and then, maybe, make
13 some enforcements of the problem areas.
14 The problem is that the on-farm monitoring,
15 four samples per year, cannot adequately describe water
16 quality on the farm. It doesn't describe water
17 quality. It doesn't describe practice effectiveness
18 and it doesn't describe any kind of trend analysis.
19 To do those things, it's a very different
20 kind of sample. A sampling that kind of -- I like to
21 use the student, it costs 30- or 40,000 dollars a
22 year. You have your APs, and you have your statistics,
23 anthem program, et cetera, et cetera.
24 So, um, and I can do the same thing with the
25 nitrate management plan. The nitrate management plan

Page 214

1 in the Draft Order is so vague. It's so hard to
2 interpret what it means, that the implementation of
3 those two things alone will create an avalanche of
4 reports that the Staff are not one -- they are very
5 qualified in a lot of areas, but interpreting agronomic
6 use of agricultural products, like fertilizer, and
7 making a reasonable assessment that the pollution load,
8 based on the reports is impossible. I cannot do it. I
9 don't know anyone that can do it from the academic
10 standpoint, and I know, in terms of a regulatory
11 context, you're going to generate a lot of paperwork to
12 prioritize a lot of farms, people are going to make a
13 lot of visits and they're going to say, what happened?
14 These reports didn't tell us anything. And I'm
15 absolutely sure of that.
16 I'm also sure that you can sample a farm
17 almost a dozen different ways and get different kinds
18 of water quality. Again, I don't know how improved
19 water quality, if we're getting data from a farm that
20 doesn't mean anything.
21 **MR. JEFFRIES:** A few months ago, you gave us
22 presentation. You gave us a lot of boxes, but you
23 didn't give us much information within those boxes, and
24 there was a question of funding, at that point in
25 time. Has the agricultural community -- are they

Page 215

1 continuing to fund you in this program.
2 **DR. LOS HUERTOS:** No. No, I'm an idiot. I guess
3 they hired me in the summer to write a report and meet
4 with growers and I kind of fell in love with my idea
5 and I've kind of been working on my own since. I also
6 stopped for various reasons. One of the reasons, I
7 don't have a contract with Quality Restoration either
8 anymore because I felt that was a conflict of interest.
9 **MR. JEFFRIES:** And if you to do an analysis for
10 this whole Ag Order, how much time would it take and
11 what kind of dollars are you looking at?
12 **DR. LOS HUERTOS:** In terms of, from a scientific
13 perspective or policy perspective?
14 **MR. JEFFRIES:** Well, you're looking at scientific
15 as well as policy because you're integrating both ways.
16 **DR. LOS HUERTOS:** It's a little hard to predict.
17 For example, many of the findings I have trouble with.
18 So, for example, the idea that we are having Water
19 Quality problems and they're getting worse, that may
20 be, but trend analysis is extremely hard to do,
21 especially when you have improper data. What
22 environmental science is really good at is finding a
23 better way to measure pollution and detect pollution as
24 a problem. So I can say, for sure, we are getting
25 better at detecting pollution in the last ten years

Page 216

1 than ever before. Granted. I also know, starting in
2 1910 to now, we've got a significant -- a lot more
3 agricultural chemicals and a lot more pollution. I
4 can't say that between 1995 and 2005, that when you
5 decide that time zero is, makes a huge difference in
6 trend analysis, so a lot of findings are -- would have
7 specific trends in mind, but it's not clear how those
8 are generated, so analysis that far back, could take
9 six months and \$300,000 and -- sorry.
10 **MR. JEFFRIES:** No, that's all right. Finish your
11 sentence.
12 **DR. LOS HUERTOS:** If it was more on an
13 implementation of a grant -- here, I'm already writing
14 the grant. Um, I'm hoping someone will stand up and
15 say, I'll fund the grant.
16 In terms of the scientific capacity of Water
17 Quality to pick -- let's say, if we implement the Water
18 Quality Ag Order right now, and we spend a year
19 collecting data to see how that would do, so about
20 probably \$100,000. So go around, collect a bunch of
21 water quality data on farms, measure the water falling
22 the growers get, and then compare that to what you
23 might get with a more standardized approach. There may
24 be 30 parcels or so you could do that and then compare
25 what they get versus what you get. My guess is it

Page 217

A6028BD
PANEL HEARING MARCH 14, 2012

1 would be about -- 50 percent would be right on. And
2 the other 50 percent would be, God, that's way off.
3 But what it wouldn't do is tell you about practice
4 effectiveness. And that would really have to be on
5 each farm separate, and that's a huge project.
6 Probably \$50,000 per farm, per practice.
7 **MR. YOUNG:** Per practice?
8 **DR. LOS HUERTOS:** Because you have to have
9 controls, right? You have to have practice and
10 control, which is -- you know, science sucks. It's a
11 lot of money. And, well --
12 **MR. JEFFRIES:** Well, talking about funding. How
13 much would you anticipate, if you took all acreage, how
14 much would each farmer have to contribute to do all
15 this if you're saying \$50,000?
16 **DR. LOS HUERTOS:** For the research itself?
17 **MR. JEFFRIES:** Well, the practice.
18 **DR. LOS HUERTOS:** So per farm?
19 **MR. JEFFRIES:** For one farm is --
20 **DR. LOS HUERTOS:** 50k or so.
21 **MR. JEFFRIES:** So if it was 1,000 acres, I didn't
22 bringing my calculator.
23 **DR. LOS HUERTOS:** I can't do math standing up.
24 **MR. JEFFRIES:** I'll go on to my next question.
25 **DR. LOS HUERTOS:** Let me say that was part of why

Page 218

1 I created this \$500,000 budget, within this program, is
2 that we would be able to do these kinds of on-farm
3 tests, and I actually forced myself to say, you know,
4 what we are going to need? We're going to get the
5 PCA's involved, we're going to get the fertilizer
6 companies, we're going to get the pesticide companies,
7 we're going to get a lot of them, we're going to have
8 to force them, get a lot of match money. Get UC on
9 board, get a ton of research we need from them not the
10 utility trials and really create a collaborative
11 project that the growers can get behind and trust. And
12 I will say, people like Bobby Martin. He spent a fair
13 amount of money. He's testing a whole lot of
14 lysimeters on his farm. He spent probably 20- or
15 \$30,000 of his money testing. I think we can leverage
16 a lot of that.
17 **MR. JEFFRIES:** I think that's the reason he left
18 before you spoke so you couldn't ask about his wallet.
19 But my next question is in the Staff Report,
20 they talked about five key elements. Do you remember
21 what these are?
22 **DR. LOS HUERTOS:** Yeah, they were really good.
23 I'd like to address them, one at a time, with more time
24 and sophistication. I think those are key. I think I
25 address them, but they said them fast enough I couldn't

Page 219

1 jot them down to address at the time.
2 **MR. JEFFRIES:** And I'm just wondering what your
3 opinion was of those five key elements.
4 **DR. LOS HUERTOS:** I think they were fine. I don't
5 remember the details. I think they set the bar at a
6 bar that I thought was reasonable and important and
7 worthy of consideration. Nothing. I don't remember
8 anything jumping out of at me.
9 **MR. JEFFRIES:** So I think they're all attainable,
10 then?
11 **DR. LOS HUERTOS:** Yeah. I wish -- I didn't write
12 them down.
13 **MR. JEFFRIES:** I know.
14 **DR. LOS HUERTOS:** I thought they were pretty
15 cool.
16 **MR. JEFFRIES:** Well, I don't want to go too far
17 into this.
18 **DR. LOS HUERTOS:** Do you want me to pull it up and
19 we can look at it, if that will help?
20 **MR. JEFFRIES:** Yeah, please.
21 **MS. McCHESNEY:** Well, Mr. Jeffries. I just want
22 to say that those five key elements are the key
23 elements in the State Board 9-point source documents
24 and are required to be --
25 **MR. JEFFRIES:** I understand.

Page 220

1 **DR. LOS HUERTOS:** They're nice bullets to talk
2 about, yeah.
3 **MR. JEFFRIES:** Let's just get his analogy of it
4 I'm not disputing the elements.
5 **DR. LOS HUERTOS:** Okay. So are you ready?
6 **MR. JEFFRIES:** Yep.
7 **DR. LOS HUERTOS:** Practice management
8 implementation verification. The verification process
9 is the audit process and that creating the audit
10 process is having the external independent was the
11 idea, and tell you the truth half of this, the major
12 portion of this project could create a context where
13 verification can take place. And the growers are
14 actually very sophisticated in thinking about this in a
15 way that surprised me. When I said well, how do you
16 want to do the audit? They said it has to be
17 independent, has to stand alone, it's got to be
18 completely transparent in terms of the criteria, that
19 people have to be able to evaluate that. We talked
20 about maybe having staff help and involved in
21 developing the audit. They were queasy about that, but
22 I think if they didn't have a choice they could go
23 there.
24 **MR. JEFFRIES:** Transparent to who, the public?
25 **DR. LOS HUERTOS:** I want to make sure I'm not

Page 221

A6028BD
PANEL HEARING MARCH 14, 2012

1 overstepping here, the results wouldn't necessarily be
2 transparent, but the audit criteria standards.
3 **MR. JEFFRIES:** That's what I was referring to the
4 transparent at all stages to the public.
5 **DR. LOS HUERTOS:** Yeah, so the way we talked about
6 it, in terms of the audit, was it could change. These
7 are proposals that I'm negotiating with Farmers for a
8 three-month period. The way we talked about it was
9 that those audit results would basically be sort of a
10 pass fail, but then that would be passed on to the
11 Water Board in terms of -- well, yeah to show that they
12 have actually met their criteria to meet the auditing
13 and frankly, I will say, coming back to the issue of
14 the Staff time I thought -- frankly, I thought two
15 things: One, it would lead to the amount of Staff time
16 to try to figure out what's going on, on all of these
17 farms. Two, and I don't think the growers are
18 appreciating us very much, but on some level, now you
19 have someone that speaks for the growers for the
20 ongoing issue in terms of negotiation for the Ag
21 Waiver.
22 Every time he talks to the growers, we have a
23 different group of growers saying, well, that's not
24 us. And here you have a group of growers that are in a
25 group that actually have the capacity to negotiate. If

Page 222

1 there's still problems and the capacity to come to the
2 table when the staff are seeing problems and continue
3 to exist which I think has been really -- says
4 something strong about our region, because the growers
5 in this region are very, very vested and very
6 thoughtful about maintaining a professional
7 organization.
8 I think Water Quality Preservation, Inc., is
9 an outstanding example that I think, in most cases,
10 it's extremely professional.
11 **MR. JEFFRIES:** That ought to be worth a few
12 bucks.
13 **MR. YOUNG:** Any other questions for Mr. Jeffries?
14 **MR. JEFFRIES:** I had one more question, but I'm
15 sure it will take a couple hours.
16 **MR. YOUNG:** Mr. Johnston.
17 **MR. JOHNSTON:** Mr. Los Huertos, you know, trust
18 but verify. And I think that's a lot of what the whole
19 conundrum is coming down to.
20 I mean, that's one of the big issues. It's
21 not the biggest in this whole back and forth and back
22 and forth between the Staff Draft and the Ag
23 Alternative, and it's kind of funny because usually
24 farmers and business people in general are protective
25 of proprietary information because they don't want

Page 223

1 their competitors to see it and here it's because they
2 don't want us, the Board, and the public to see it.
3 And it certainly does give us a queasy feeling, you
4 know, in terms of how do we do the verify part of the
5 Trust but verify. And I'm looking at those key
6 elements over there and management practice
7 implementation and verification. And I understand
8 you're saying the audits would verify, but what of any
9 the folks who swore an oath to actually uphold the law
10 and to make sure that this stuff is getting done, and
11 there's -- so I have questions about what we can
12 delegate about that. Similarly the -- and it has a
13 little bit to do with all five of those, but similarly
14 in Number 5 consequences for failure to achieve
15 objectives and individual Dischargers really having the
16 responsibility and being accountable. And so, I mean,
17 I really get the concept that we can accomplish some
18 things collaboratively that we can not accomplish with
19 a straight stick approach. I get that. But I'm just
20 wondering and I understand that you don't speak for
21 agriculture, that you're simply speaking as, in a
22 sense, an expert because you, as an outsider, have done
23 a lot of interviewing, so I'm just looking for your
24 opinion here and hoping I don't mess you up on your
25 future bid to contract with some farmers, but, I mean,

Page 224

1 do you see some creative ways to deal with that
2 conundrum? Because right now, we've got really got,
3 kind of, an immovable object and unstoppable force on
4 this question. Is it having Staff that can review the
5 audits, but the audits aren't turned in? I mean, that
6 answers one piece of it. It doesn't answer the
7 public's piece of it. Is it having the audits
8 published, but -- and, maybe, Staff on a farm basis
9 looked at them, and know where their applicable, but
10 they're published without an identity. I don't know,
11 but if we can't work through that one, it's not clear
12 to me how we come to resolution on this. And I've
13 heard the legal arguments from agriculture as to why
14 that's not necessary and I've heard the legal arguments
15 from our counsel as to why it is, and personally, I
16 can't speak for any of the Board members, but it's a
17 pretty high threshold for me to simply discount our
18 counsel's argument and say, okay. Fine. I'm going to
19 go with what they say. They have an interest.
20 Well, you know, that's another -- there's a
21 lot in here. Let me begin with something that I was
22 reflecting on with Daniel Perez, two nights ago, about
23 this issue, for a couple of hours and he talked about
24 that really Porter-Cologne and Green Water Agri Policy
25 failures, they're ambient Water Quality Programs with

Page 225

A6028BD
PANEL HEARING MARCH 14, 2012

1 quick source regulatory rules and, on some level, Don
2 Poins got stuck in the middle. It is an awkward,
3 uncharted territory and, I thought, that's pretty
4 compelling. I didn't know what to do with it, but I
5 thought it was compelling. When I thought about it, it
6 turns out that when you think about the sort of land
7 that we don't know what to do with yet, we're -- really
8 need to step back and look at, sort of, the long-term
9 goals of what we're trying to accomplish. We have a
10 huge number of people that are managing a lot of land
11 in our region and, on some level, we're looking for two
12 things to happen besides Water Quality improvement. To
13 get there, we need cooperation from them. So I have to
14 admit, it seems to me, that on some level, this is not
15 necessarily a regulatory issue, but a political issue.
16 And as a political issue, we probably need to think in
17 terms of long-term goals. So I would say the 2004 was
18 a very good start. It got people regulated, used to
19 being regulated, and it put them in a place where they
20 understood Water Quality problems were in the region.
21 When they start paying the bill to see Sara Daphnia die
22 from their water, they don't know what to do with it
23 yet. We do not have the practices available to make
24 the water nontoxic. I don't know how to farm and
25 fertilize a field without nitrate leaving the soil.

Page 226

1 That's how Ag works. You have to -- the salts don't
2 get taken up, the nitrogen does. You can't get
3 100 percent usually it's around -- at the best, we can
4 get about 80 percent. It's a -- US EPA studies are not
5 80 percent, in that context. We are in a very stuck
6 place. We want agriculture to remain present and
7 productive and we want very high water quality that we
8 are, frankly, not just deserve, I think we have a right
9 to. Getting there is going to take some creativity
10 and, I would say, that the creativity that we're trying
11 that we are trying to create some space for, is it
12 creativity to say, let's work on practices that really
13 are getting there and I want that stick of the Regional
14 Board Staff to enforce the Waiver in the Alternative
15 Proposal in the way they have and can, and enforce even
16 the 2004 Waiver.

17 I think the most effective enforcement is
18 random inspections on farms wherever you are. I think
19 it sends a message to Tiers 1, 2, and 3, you don't get
20 a pass at any level. You only have to do a few in
21 every watershed, and believe me, the word gets out.

22 **MR. YOUNG:** Dr. Los Huertos, could you quickly
23 conclude? We can go on and on.

24 **DR. LOS HUERTOS:** I think I'm done. I think I'm
25 there.

Page 227

1 **MR. YOUNG:** I don't know if that answers your
2 question.

3 **MR. JOHNSTON:** It didn't answer my question at
4 all, but it was interesting.

5 **MR. JEFFRIES:** It sounds good.

6 **MR. YOUNG:** Dr. Hunter, did you have any
7 questions.

8 **DR. HUNTER:** No.

9 **MR. YOUNG:** Okay. All right. Thank you very
10 much.

11 Ross Clark and then Ms. Cleary. And then
12 Mr. Hamid. Mr. Stoker, I see you in the back. You
13 don't want to speak, but I do have a card.

14 **MR. STOKER:** I turned that in because I had to
15 leave early.

16 **MR. YOUNG:** Did you want to speak?

17 **MR. STOKER:** Yeah. I wanted -- yeah. I had to
18 leave early and I gave it for the purpose of leaving
19 early when you had asked for people.

20 **MR. YOUNG:** Maybe after the speaker, if you want
21 to come up, you can have two minutes, okay?

22 Go ahead. All right.

23 **MR. CLARK:** Good afternoon. My name is Ross
24 Clark, C-l-a-r-k. And I'm the Director of the Central
25 Coast Wetlands Group at Moss Landing Marine Labs.

Page 228

1 Thank you very much for this opportunity to
2 present some of our work to you today and discuss how
3 it may be integrated into the Agri process. The
4 Central Coast Wetlands Group has worked with
5 landowners, local agencies, the Monterey Bay National
6 Marine Sanctuary, the California Coastal Commission,
7 and the Regional Board to restore over 150 acres of
8 coastal wetlands and creek habitat in the Salinas
9 Valley.

10 **THE REPORTER:** Can you slow down just a touch?

11 **MR. CLARK:** Slower?

12 **THE REPORTER:** Just a little bit. Thanks.

13 **MR. CLARK:** Our partners have also documented the
14 improvements to Water Quality and the reductions in
15 nutrient and pollutant loads associated with those
16 projects. Today, I am here to introduce to an effort
17 supported by the DWR to integrate the construction of
18 treatment wetlands as a component of agricultural
19 water management strategies and provide input from the
20 farmers on the possibilities of using these strategies
21 as a component of their water quality management
22 strategies for on farm practices.

23 The Greater Monterey County Irrigated
24 Regional Water Management Program was established in
25 2009 to support integrated water source planning and

Page 229

A6028BD
PANEL HEARING MARCH 14, 2012

1 address the multiple water resource objectives of the
2 region.
3 In 2005, the Central Coast Wetlands Group and
4 Cal State Monterey Bay constructed the Molera Road
5 Treatment Wetland here on the slide at the Confluence
6 of the Tembladero Slough and the Old Salinas River
7 Channel to evaluate the water quality value of
8 constructed wetlands in unison with on field farming
9 management practices. The results of these studies
10 document the nutrient load reductions and overall water
11 quality improvements provided by the combination of
12 sound farm management practices and constructed
13 wetlands. Dr. Fred Watson, at CSUMB, calculated that
14 approximately 450 acres of restored creek wetland,
15 within the lower Salinas Valley, in combination with
16 sound farm practices, would be significant in reducing
17 pollutant loads within the Gabilan Watershed, to a
18 point where we should see a response in water quality
19 data collected by the Central Coast Ambient Water
20 Quality Program.
21 We are using the results of these studies and
22 our relationship with local farmers to identify
23 opportunity sites for the construction of additional
24 treatment wetlands. I provided a handout for an
25 example of one of those projects.

Page 230

1 To achieve our achieve our combined
2 objectives of improving water quality and wetland
3 habitat, we rely on the support of the regulatory
4 agencies to develop policies that highlight the
5 importance of wetland construction as a management
6 strategy. Similarly we rely on the interest of the
7 landowners to provide us access to areas on their
8 properties appropriate for wetland creation.
9 We hope that the end product of the Ag waiver
10 process provides the flexibility to adopt Watershed
11 Specific Strategies that integrate off site management
12 strategies including the construction of these
13 treatment wetlands.
14 Through the Irrigated Water Management Claim
15 process and its funding, we are developing a watershed
16 strategy that supports the construction of treatment
17 wetlands as a component of individual and multiple
18 landowner water quality management strategies within
19 the lower Salinas Valley.
20 We have identified multiple opportunity areas
21 within the Tembladero/Blanco Drain area, including a
22 9-acre project that you have a handout for, where
23 treatment wetlands of various designs could be
24 constructed to provide water quality benefits as well
25 as increase the amount of freshwater wetland habitat.

Page 231

1 Farmers are very enthusiastic and interested in
2 integrating this type of off farm treatment into their
3 programs, because it could being very cost effective,
4 but they need the assurance that such actions will
5 provide a benefit to permit compliance.
6 Before we'll be able to implement such
7 strategies, we will need to identify the value of this
8 business strategy. A critical component of a
9 Agricultural Business Plan is the identification of the
10 costs and risks of proposed actions as well as the
11 estimated value of these actions to the business.
12 We've identified some of the cost and benefits for
13 treatment right here, including a cost and liability
14 fees, conversion of some of their lands to wetlands,
15 implications of having wetlands on their property, the
16 cost of construction, maintenance, and monitoring the
17 implementation of these measures as well as liabilities
18 of other regulatory programs, including threatening of
19 endangered species, 401 permits, et cetera. They have
20 identified numerous benefits to adopting this into
21 their farming plans, including priority issues at
22 superior cost benefits of taking these actions. Many
23 farmers are very interested in spending money to fix
24 the problems and improve water quality instead of
25 additional costs associated with reporting and

Page 232

1 monitoring. The other benefits are that,
2 hypothetically, this will reduce all permit compliance
3 costs. There will be an effective use of opportunity
4 sites on underused portions of their properties. They
5 will be seen as environmental leaders in the industry.
6 There's a collaborative opportunity to partner with
7 neighboring landowners on these projects and it
8 instills a watershed approach to addressing water
9 quality issues.
10 Key issues to address, though, through this
11 planning process before we can create these types of
12 treatment wetlands include a mechanisms to ensure that
13 participating landowners sufficient regulatory credit
14 for these actions to offset the costs and liabilities
15 of these unique approaches. We need to identify
16 adaptive management processes for projects that miss
17 interim or quality objectives. We need to allocate
18 costs among landowners. We need to establish safe
19 Harbor agreements and maintenance plans so these
20 treatment plans can be maintained over time. We have a
21 need to address other food safety concerns and we'll
22 need to integrate these projects with the best of our
23 ability.
24 All issues that we were prepared to address
25 and, hopefully, can use this forum and working with

Page 233

A6028BD
PANEL HEARING MARCH 14, 2012

1 Staff to accomplish this.
2 Farmers have raised several issues that I
3 have brought up here and we must work to address them
4 before we can get access to and create these wetlands,
5 but we are very encouraged by their current interest in
6 working with us to the fact that they have reached out
7 to us to talk about and take us out to the opportunity
8 sites on their land. It's an extreme change in the way
9 that we have been interacting with farmers in the last
10 few years. If we can minimize the liabilities and make
11 treatment wetlands a cost effective business strategy
12 for sustainable agriculture, we will be better prepared
13 to meet our region's Water Quality and wetland
14 management objectives. In conversations with Regional
15 Board Staff, we have been insured that the current Ag
16 Waiver process can -- does provide avenues to integrate
17 this type of off site wetland treatment into the Ag
18 permit process, but there are lots of questions
19 outstanding on how that compliance can be achieved and
20 how we can address these other costs and liabilities
21 that the farmers have identified. They hope to work
22 with Staff over the next year to identify opportunities
23 to integrate these practices.
24 **MR. YOUNG:** Thank you for your comments.
25 Mr. Jeffries.

Page 234

1 **DR. HUNTER:** Just quickly, Ross. Thank you,
2 today, for coming --
3 **MR. YOUNG:** Speak up.
4 **DR. HUNTER:** -- in and helping us to gain a
5 perspective on the work of the Central Coast Water
6 Project and how you might fit in to contributing to
7 technical solutions we need. So just so I'm clear,
8 your second to the last slide was referring to the
9 IRWMP planning process. Does that reflect the
10 possibility that IRWMP monies are going to go into
11 supporting this or what is the connection to IRWMP?
12 **MR. CLARK:** We do have planning funds currently
13 through greater Monterey IRWMP to provide technical
14 support to design treatment wetlands identified
15 opportunity sites and use some of those resources to
16 help address some of these outstanding questions on how
17 these types of wetland projects can be integrated into
18 whatever type of regulatory process is adopted.
19 **DR. HUNTER:** Okay. So this is still a pilot
20 program level or is it more of a -- the ability to go
21 and assess unique, you know, one site does not fill all
22 kind of approach.
23 **MR. CLARK:** We are going to address that at some
24 watershed level, looking at the lower Salinas Valley,
25 and found this a significant opportunity place to work

Page 235

1 especially since many of the landowners are very
2 interested to work with us.
3 **DR. HUNTER:** Okay. Good.
4 **MR. YOUNG:** Okay. Mr. Jeffries?
5 **MR. JEFFRIES:** Yes. Well, I had a question, but
6 some of us Board members did tour the Molera site,
7 approximately a year or so ago, and was very interested
8 and was very productive. My question to you is that it
9 appears to me, for this to work, you're going to have
10 to take the land out of production, is that correct, in
11 some areas?
12 **MR. CLARK:** In some areas if we can address the
13 cost issues, some farmers have said that they would be
14 willing to do that.
15 **MR. JEFFRIES:** Oh.
16 **MR. CLARK:** We have identified many locations
17 where the land is too wet to farm and it's currently
18 just destined for weed management. We are going to
19 focus primarily on those as part of the pilot project.
20 **MR. JEFFRIES:** My next question if you can set
21 more of these up in wetlands, this will create more of
22 a Riparian corridors. How does this work with the food
23 safety issue?
24 **MR. CLARK:** We have funding within the IRWMP to
25 ask that question and utilize some of our partner

Page 236

1 organizations that are at the forefront of the food
2 safety process to identify the appropriate management
3 strategies to ensure that farmers aren't, in some way,
4 penalized for having this type of treatment done on
5 their sites. We have identified woven and bunny
6 fences, use of certain types of plants over others, but
7 we are going to work through that process to ensure
8 that the systems we put out will not post additional
9 food safety liabilities.
10 **MR. JEFFRIES:** Are you only looking to do this at
11 the lower Salinas Valley or are you looking to do
12 throughout Salinas, Santa Maria and throughout the
13 whole region?
14 **MR. CLARK:** We have money to do it in the lower
15 Salinas Valley, but we have addressed Staff questions
16 and we would be happy to partner with other areas
17 that want to incorporate the same ideas and we'll look
18 for opportunity funding or do as much as we can to help
19 move this idea forward throughout the region.
20 **MR. JEFFRIES:** Thank you.
21 **MR. YOUNG:** Thank you for your comments.
22 **MR. CLARK:** Thank you very much.
23 **MR. YOUNG:** I'm taking two people out of order,
24 Mr. Stoker, come up if you would, and then Ms. Lopez.
25 **MR. STOKER:** Thank you, Mr. Chair.

Page 237

A6028BD
PANEL HEARING MARCH 14, 2012

1 Mr. Chair, honorable members of the Board. My
2 name is Mike Stoker, S-t-o-k-e-r. I'm here today
3 representing the United Agribusiness League. The
4 United Agribusiness League is an agricultural
5 association that provides multiple employer benefits
6 through its over 1400 employer members. The League
7 provides health insurance for over 42,000 agriculture
8 employees. On behalf of those employers and employees,
9 the League strongly urges the Board to reject Staff's
10 recommendation. The fact is that California is grossly
11 overregulated which impacts were recently documented in
12 the Barsney report.

13 In that report, Professor Barsney, the Dean
14 of Business School for Cal State Sacramento with
15 empirical data demonstrated that California since 2000
16 has lost over 4,000 jobs due to overregulation.
17 Regulations that were passed by regulatory agencies,
18 like this Board, regulations that are not on the books
19 in any other states or any other countries.
20 Regulations as as the report proves cost the state over
21 \$17 billion dollars in lost revenues last year alone.
22 Today, we have another example of a proposed
23 legislation that is not on the books in any other state
24 or any other country. A regulation that will cost
25 Agribusiness more money to operate and a regulation

Page 238

1 that will cost more jobs to be lost and a regulation
2 that will cost California to most likely lose more
3 money in revenues. In trying economic times like
4 these, for all California businesses, but especially
5 Agri businesses, the more and more finds itself on the
6 threshold of not being able to compete in the global
7 market where the foreign competition has very little,
8 if any, of regulatory burdens like California farmers
9 face.

10 United Agribusiness League would ask the
11 Board to move in a direction and adopt the coalition's
12 Agricultural Alternative previously presented to this
13 Board. The alternative is based on the successful
14 mileages of sure foot safety, that alternative, while
15 still imposing additional regulatory burdens on
16 agriculture, that agriculture in other states will not
17 face, provides a win-win to help this Board meet its
18 goals, but also help agriculture help meet your goals,
19 in a less costly and offensive manner.

20 And finally, I would just like to point out
21 to the Board, I called Senator Strickland after lunch
22 and I told him, Tony, Congressman Farr and State
23 Legislators, Alejo, yourself, Blakely, Cannella have
24 all recommended the same recommendation of moving force
25 in one form or another of the Agricultural

Page 239

1 Alternative. And Senator Strickland wanted me to
2 communicate to this Board, when you have that group of
3 representatives, all agree on the same thing, which
4 varies -- I can't remember a time that you would see
5 that group agreeing on something. That's pretty
6 telling testimony of a perhaps a win-win direction in
7 terms of how to deal with this situation. And I agree
8 with the Senator and would urge you to direct Staff to
9 try to pursue the Agriculture Alternative and I'm
10 completely convinced as Congressman Farr said earlier
11 today, you're going to be able to work out those
12 issues.

13 Mr. Chairman, I want to thank you again for
14 allowing me some time so I can make an obligation in
15 Santa Barbara this evening.

16 **MR. YOUNG:** Thank you for your comments.

17 Okay. Sara Lopez. Oh, I should have known
18 we have two Lopezes; right? Sara Lopez, Preservation,
19 Inc. Okay. Do you need to leave early? Well, that's
20 a good one.

21 **MR. JOHNSTON:** It may last until midnight.

22 **MR. YOUNG:** Do you need to leave today early?
23 That's what I thought this was about. Okay. You need
24 to leave early. Go ahead. You have two minutes.

25 **MS. LOPEZ:** Thank you. Okay.

Page 240

1 Good afternoon, Chairman Young and members of
2 the Board. My name is Sara Lopez and I am the program
3 manager of Preservation, Inc.

4 **MR. YOUNG:** Speak into the mike.

5 **THE REPORTER:** Yeah, you need to speak a little
6 bit louder.

7 **MR. YOUNG:** Real loud, project. Something I don't
8 do.

9 **MS. LOPEZ:** My name is Sara Lopez.

10 **MR. YOUNG:** Speak into the mike.

11 **MS. LOPEZ:** My name is Sara Lopez --

12 **THE REPORTER:** Much better.

13 **MS. LOPEZ:** -- and I'm going to sing a song.

14 **MR. YOUNG:** You've got one minute left.

15 **MS. LOPEZ:** I'm the technical program manager for
16 Preservation, Inc. We manage the Cooperative
17 Monitoring Program on behalf of the agricultural
18 industry. I wanted to talk quickly about one of our
19 cooperative monitoring sites which is Quail Creek,
20 that's just south of Salinas. It's a tributary to
21 Salinas River. This monitoring site has shown
22 significant reductions of nitrogen to the Salinas
23 River. By significant, I mean that, at the beginning
24 of the waiver period 2005, -06, and -07, the
25 instantaneous nitrogen loads at that monitoring site

Page 241

A6028BD
PANEL HEARING MARCH 14, 2012

1 were 4.2, 12.8, and 5.5 pounds of nitrogen per hour.
2 In 2009, -10, and -11, the nitrogen levels were 0.00,
3 0.9, and 0.00 pounds of nitrogen per hour. The load
4 reductions are the direct result of actions taken by
5 farmers on the watershed for tail water run-off. These
6 efforts began when Water Board Staff began focusing
7 inspections on the watershed.

8 The growers received confidential edge a
9 field Water Quality information from Preservation,
10 Inc., and coordination from Monterey County Farm
11 Bureau. All involved received an award from the
12 Monterey Bay National Marine Sanctuary.

13 Water Quality issues in the creek remain and
14 this is but one of 50 monitoring sites. I think this
15 is an example of the Ag Waiver and the cooperative
16 monitoring programs doing their jobs. The Water Board
17 Staff used CIP data to prioritize inspection. The
18 growers used water quality data to format agronomic
19 practices. We had a measurable change at the
20 cooperative monitoring point.

21 I think change will look a little different
22 on every watershed, but I hope to have more data like
23 this to share in the future. All right.

24 **MR. YOUNG:** Mr. Jeffries.
25 **MR. JEFFRIES:** Yes. Can you tell me where your

Page 242

1 monitoring location was? Is it up, far up Quail Creek
2 or is it below the greenhouses? Where is it located?

3 **MS. LOPEZ:** It's below the greenhouses. It's
4 where the -- just before the Creek crosses under
5 Highway 101.

6 **MR. JEFFRIES:** Way down? Okay.
7 **MS. LOPEZ:** It's not quite --
8 **MR. JEFFRIES:** And did you determine the type of
9 nitrates that you had back in the original monitoring.
10 **MS. LOPEZ:** The type of nitrate?
11 **MR. JEFFRIES:** Because the upper portion of Quail
12 Creek is a cattle ranch. Was the nitrates from nature
13 manure or was it from manufactured fertilizer.
14 **MS. LOPEZ:** I, so in the absence of a major storm
15 event, there's no water in Quail Creek except for
16 irrigated agriculture discharges. The discharges start
17 just above Old Stage Road, so up in the portion of
18 watershed is the cattle ranch, and absent a storm there
19 is actually no water.
20 **MR. JEFFRIES:** So your measurement was during the
21 dry period?
22 **MS. LOPEZ:** We measure once per month. So it's
23 12, um, it's measurements per year.
24 **MR. JEFFRIES:** But the Quail Creek does runs
25 probably until March/April normal rainfall period; is

Page 243

1 that correct.
2 **MS. LOPEZ:** At the beginning of the Waiver periods
3 there was flow roughly 12 months a year. In more
4 recent years, many months have no flow at all.
5 **MR. JEFFRIES:** Okay. I was more interested in
6 where the marking was, above the greenhouses, below the
7 greenhouses.
8 **MS. LOPEZ:** Below the greenhouses.
9 **MR. YOUNG:** Okay. Thank you for your comments.
10 All right. Back to the list I have in front
11 of me.
12 Is Jennifer Cleary, Clean Water Action.
13 **MS. CLEARY:** While I'm waiting for my presentation
14 to come up, I'd just like to thank Sara Lopez for
15 taking care of the microphone.
16 So my name is Jennifer Cleary. I am program
17 associated at Clean Water Action. I've been working on
18 irrigated Ag Programs in the Central Valley for several
19 years.
20 I'm also a member of -- our organization is
21 also a member of Environment Justice Coalition for
22 Water, and so they asked us to step in here, and since
23 they don't have a staff, we've taken a larger role.
24 And I do want to thank the Board, and the staff for
25 being so helpful in allowing me time to speak, I'll do

Page 244

1 my best to take as little time as possible, because
2 it's getting very late, and I know there's a lot of
3 problems to cover. ;.
4 I'd also like to thank the members of the Ag
5 Community that met with me and have been very
6 sympathetic and respectful of the communities I'm
7 trying to represent, so it's very important to me.
8 So at this moment, so first the Environment
9 Justice Coalition for Water and they brought people to
10 meetings since 2009, and just to say these are some of
11 the community members we brought. We've got poor
12 turnout today, and I have to tell you that this has
13 been a very difficult process. I know it's been a
14 difficult process for everyone, but when you're working
15 on farms you have work whenever you're scheduled, to
16 come to a meeting, you're not going to get paid, you
17 already got issues of poverty, this has been very
18 difficult, and I would just say that process is an
19 environmental justice issue, as well, and I think that
20 this process has not been kind to some of these
21 communities.
22 Then, just to move on from that, just to give
23 you a map that you may already have, some existing
24 information. A disadvantaged communities in Monterey
25 County, it's a pretty significant chunk of the County,

Page 245

A6028BD
PANEL HEARING MARCH 14, 2012

1 I do want to talk about San Jerardo.
2 San Jerardo is a fellow member of The
3 Environmental Justice Coalition for Water, and I want
4 to say one of the silver linings about doing this kind
5 of work, there's a lot of problems with it, but you get
6 to meet amazing people and work with them for many
7 years, like Horacio and Mesquita, who sent me a bunch
8 of texts today. The most recent of which said, "Take a
9 deep breath and talk slowly." And he also said to ask
10 the Water Board to please vote for the program today.
11 But I want to stop a minute on this slide,
12 and I'm not an agricultural expert, and I don't pretend
13 to be, but I work on water quality a lot, and I work on
14 drinking water a lot, and the cost to communities is a
15 lot.
16 So using San Jerardo as an example,
17 San Jerardo had wells one after another go out of
18 commission. And, you know, the first thing you try to
19 do when your well goes out is dig a deeper well,
20 because that's the cheapest alternative, and if you can
21 get clean water, and you don't have to treat it, you're
22 in good shape.
23 And so San Jerardo tried that in 2001 when
24 their last well went bad and so until 2006 they didn't
25 have safe drinking water. And they were on the

Page 246

1 priority list for the drinking water State Revolving
2 Fund, on the priority list for funding, for about six
3 years. And, somehow, they never got funded, and that's
4 a whole other story.
5 The county very kindly stepped in and they
6 had paid \$15,000 a month to filter that well water for
7 the community. And I really give them kudos for that
8 because a lot of communities couldn't match that cost.
9 So finally with Prop 84 we were able to get
10 funding to get the well, and get a new well for
11 San Jerardo.
12 Unfortunately, it's two miles away, so you
13 have the cost of pumping. It's a deeper well. And
14 also, you know, the reason why you have groundwater is
15 because in a good world it's cheaper. Surface water
16 you always have to filter and disinfect. Groundwater,
17 if it's clean, you just pump and serve it. But the
18 minute something goes wrong, you're entire economic
19 model goes out the window, because the state comes in
20 and says before we give you money, you have to prove
21 you have the capacity to use it. So your budget has to
22 be enough to cover half of what you serve.
23 So for the first time these communities have
24 to, if you add treatment, they have to pay for
25 treatment. If you have a deeper well, you have

Page 247

1 increased costs. So the costs go up and up and up. So
2 what I want to point out is you might think these
3 communities get a free ride, but San Jerardo is paying
4 about 120 to 130 dollars a month for their water.
5 They US EPA says that affordable water rate
6 is about 1 and a half percent of median household
7 income. The median household income in San Jerardo is
8 \$32,000 a year. And so their affordable water rate is
9 \$37.50, so just so you understand the difference
10 between the water, what they should be paying, and what
11 they want to pay -- and just moving on from that, this
12 is what I know. When you sit down with the community
13 and you say, we can't drink our water, we're paying \$35
14 a month for our tap water, we can't drink it, and your
15 choice is okay for \$100 a month you can have safe
16 drinking water. I mean try sitting down and telling
17 someone that. It really is a tough conversation.
18 And Horacio wanted me to let you know it's
19 not just San Jerardo because we, after all, have safe
20 drinking water, and he specifically mentioned the
21 communities of Tulare, San Lucas and Prunedale. And,
22 in fact, if you look at the gamma database over the
23 past year, 62 public supply wells in Central Coast are
24 over the nitrate standard. And so this is what Horacio
25 told me in a very short form of a text. It makes for a

Page 248

1 shorter presentation. But, basically, they support the
2 Staff. This slide is a little out of order. That's
3 what happens when you do think at 5:00 in the morning.
4 Basically, the Staff has told you the health threats.
5 There are a lot of serious health effects in the
6 nitrates, and that's why we need to change it.
7 Now I understand that folks don't want to
8 talk about the report that was released yesterday and
9 that's the good and the bad news is that we don't have
10 to, because there are plenty of reports over many
11 decades showing that agriculture impacts groundwater,
12 and so I'm referring you one that was published in
13 1989, by the Health Department of Gunenad identified
14 several problems areas for nitrates on the Central
15 Coast that showed that 48 percent of all monitored
16 wells in the unconfined ocifers of the Salinas Valley
17 exceed the nitrate NCL and that the 154 wells in
18 Prunedale, 27 percent exceeded the NCLs. So this is
19 nothing new and one difficulty with this is there was
20 some recommendations in 1989, and they didn't go
21 anywhere. All these recommendations for voluntary
22 BMPs, and as far as I know, if anything happened, we
23 didn't know about since they were voluntary.
24 The Board chose to adopt the waiver in 2004,
25 with no groundwater, and of course the Central Valley

Page 249

A6028BD
PANEL HEARING MARCH 14, 2012

1 doesn't require any groundwater monitoring at this
2 point.
3 So now it's now 2012. So you adopted a
4 five-year waiver in 2004 that didn't cover
5 groundwater. Now you've extended it for three more
6 years. So you've had eight years in which you've had
7 the opportunity to at least collect information, and it
8 hasn't happened.
9 So now, if you start today, it's going to
10 take you five years to get it. So while I'm not
11 thrilled with the proposal, I just think you have to
12 start somewhere. And the fact that we've figured
13 another way to push it off, it just isn't in the best
14 interest of the communities in the Central Coast. Just
15 get more information. The Monterey County
16 Environmental Health Department 2001, 2002 sampling
17 found eight water systems over the limit of salt water,
18 16 percent of the wells tested and, you know, a lot of
19 these exceedances are marked water systems, so Morro
20 Bay, Salinas, Santa Maria, and so they have the ability
21 to treat their water, so it's an expense, not
22 necessarily a health issue. And so if you look at this
23 you're looking at small systems with nitrate
24 exceedances and you can pretty much see how serious the
25 problem is. If you go down the scale those are higher

Page 250

1 and higher nitrate concentrations. So the first one,
2 only the first bar, is under the legal limit. All the
3 other communities, if you go to the right they aren't.
4 So, basically what we're asking is take action now.
5 Some of the things we like about the proposal, just
6 pulling out a few items, honestly I'm not absolutely
7 certain I can pull them out of the right order because
8 there are so many now I'm having a hard time keeping
9 track of them, but basically, you have finding that I
10 agree with that fertilizer from irrigated agriculture
11 is the largest primary source of nitrate pollution in
12 the Central Coast. Existing and potential water
13 quality impairment takes on added significance and
14 urgency, my emphasis added it impacts the public
15 health. More information on public health, but there
16 are a lot of health defects that have been uncovered
17 through research.
18 Something that we think is very important is
19 the protection of private wells, because significant
20 populations along the Central Coast are relying on
21 private wells, and there is virtually no regulation on
22 them, so those people don't know their problems, and
23 that shallow groundwater is susceptible to
24 contamination.
25 And one of the things we like about the

Page 251

1 Order, where unfortunately once more I differ from
2 tests, is the idea of having a replacement water charge
3 inside the Order. It just makes things cleaner and
4 easier and you have less process to go through because,
5 you know, there's going to be a lot. And for all I
6 know, I don't understand how difficult it is going to
7 be to implement that requirement, but having it in
8 there, gives you a chance to address the most trivial
9 issues.
10 Groundwater monitoring is another big issue,
11 and one I have already stated. We really need to start
12 getting data, particularly on Channel ocifer, which is
13 one of the -- which we would think would be the more
14 vulnerable area, and also an area that would be more
15 likely to show changes over time. We strongly agree
16 with the proposal that over the first year every --
17 every farm is going to be testing at the irrigation
18 well, and this will be history breaking.
19 And I understand that one of your experts
20 told you that that wasn't going to be useful data, but
21 I have to tell you that no data isn't very useful,
22 either.
23 So we have concerns just like the Ag folks
24 do. We're concerned that relegating our requirement
25 for Nutrient Management Plan to Tier 3, may not be

Page 252

1 sufficient. We're concerned -- we think that all
2 fertilizer applications should be monitored. We think
3 there should be a requirement that you report
4 fertilizer application, just like you report pesticide
5 application. That would allow the Board to focus their
6 enforcement efforts because, frankly, it's -- you know,
7 I know there's a lot of difficult things about nitrate
8 contamination, but, you know, simple math is simple
9 math. If you're applying a lot of fertilizer, there is
10 more likely to be leaching.
11 Also, the Board says only about 100
12 operations would -- as currently applied under Tier 3,
13 and that number could go down under -- if you had
14 different cooperative arrangements, developed a
15 sustainability plan. There's limited pesticide
16 requirements and enforcements, and I'm not there on the
17 reinforcement program. But having said all that,
18 inaction is worse, and the longer you wait, the more
19 problems you'll have.
20 And the Human Rights for Water says that
21 every person has a right to a reasonable supply of
22 water for their personal and consumable uses.
23 And I just have to say the silver lining of
24 your not acting on this program is that I'll get to
25 know a lot more community members, because,

Page 253

A6028BD
PANEL HEARING MARCH 14, 2012

1 unfortunately, we know that the drinking water is going
2 to get worse, whatever you do. If you don't take
3 action, it's going to get worse longer. You're going
4 to have more problems, you going to have more
5 communities, and we are going to get more sick people.
6 So maybe -- if that's what it takes, that's what it
7 takes, but I hope that we don't have to do that. What
8 I hope is that you'll adopt something today, and we can
9 start moving towards implementation, talk about
10 adaptive management, and we can start thinking of still
11 moving forward, because we can't just go from here. I
12 did want to -- I'm not sure what my time is. I want to
13 quickly --

14 **MR. JEFFRIES:** How about 11 minutes.

15 **MS. LOPEZ:** I'm doing my best. I hope I didn't
16 reach high enough and I talk a little too fast, but
17 don't tell Horacio.

18 I've had a chance and my attorney had a
19 chance to scan the Ag Alternative and there -- I have a
20 few comments on it, but in general, the important thing
21 to remember is this: The idea behind a third-party
22 system, which is something that they are currently
23 using and also considering for the long-term for the
24 Central Valley, is you don't want them to hide. You
25 don't use them as a barrier between enforcement and

Page 254

1 individual grower. They should be a means to assist a
2 grower in complying with the Order, and I think the
3 difficulty that I continue to have with the Ag Proposal
4 is that it reduces monitoring requirements, it reduces
5 reporting requirements, so we'll have less
6 understanding of what's going on.

7 Delays in implementation of groundwater
8 monitoring, so you're not going to get that first list
9 of things in five years, and I think I had one other --
10 oh, yeah, a little bit of tape, then the other -- then
11 I have a specific issue with -- so under the idea of
12 meeting Water Quality Objectives and the idea of doing
13 that in 8 or 16 years, I just have a little legal
14 finding that Rose wrote up, and if you'll forgive me,
15 it says, An unnecessarily prolonged time schedule for
16 compliance effectively constitutes the de facto change
17 in water quality standards. If that interim period
18 extends beyond what is reasonable and necessary, this
19 effectively authorizes ongoing violation of Water
20 Quality Objectives. The clear force of such a program
21 is to alter the Water Quality Standards in this
22 region."

23 This is an unpublished judgment.

24 At the lower bound, the EPA as interpreted
25 three years as a reasonable compliance period. At the

Page 255

1 upper bound, the Central Valley Regional Water Quality
2 Control Board has interpreted ten years as a reasonable
3 compliance period.

4 These terms are counted from the date that a
5 water quality standard is adopted; however, not from
6 the commencement date of a program implementing those
7 standards, such as the IRWMP. Thus, for long-standing
8 Water Quality Objectives, such as that of nitrate, even
9 with a ten -- even a ten-year -- even with ten years
10 compliance period, it should probably be immediate, and
11 I don't think I have this written out for you, because
12 I didn't know you'd have to have it.

13 If you have any questions about my
14 presentation, I'm open for questions or we can move on
15 to the next.

16 **MR. YOUNG:** Mr. Jeffries?

17 **MR. JEFFRIES:** I agree with you about the
18 San Jerardo issues and problems that they've had out
19 there and, of course, I noticed Camp McClellan built
20 back in the '40s for World War II, and historically
21 they have had water problems there throughout.

22 You mentioned Prunedale in your slides
23 there. Are you inferring that the nitrate problem in
24 Prunedale is from chemical fertilizers or is it from
25 nitrates from septic tanks in the Prunedale area?

Page 256

1 **MS. LOPEZ:** As I think I told you earlier, I'm a
2 carpetbagger, so I can't tell you specific information
3 about a specific community. I will say it was a
4 community that was specifically listed as being --
5 having problems for nitrates in 1989 nitrate report.
6 It continues to be in violation of the nitrate
7 standards. I notice they have a well over the NCL on
8 the most recent report I read.

9 **MR. JEFFRIES:** Most of the wells in Prunedale are
10 not meeting the standards, but most of it's to do with
11 septic tanks in that specific area.

12 **MS. LOPEZ:** Well, you can say that, and I can't
13 prove you wrong with this specific answers, and I'm
14 sure, in some cases, that is the case. However,
15 overwhelmingly, the problem is due to agriculture, and
16 I think the idea that you keep saying it's septic is
17 disingenuous, and I think that we have septic
18 regulations coming down. I wish they were stronger,
19 but we are going to have septic regulations. And I
20 think what we need to do is not -- is not say we're not
21 going to do anything, because they have a problem. I
22 think we have to make everything work.

23 **MR. JEFFRIES:** I wasn't questioning whether it
24 should work or not. I'm just trying to clarify what
25 you were proposing, and to clarify what type of

Page 257

A6028BD
PANEL HEARING MARCH 14, 2012

1 nitrates contamination was apt to occur.
2 **MS. LOPEZ:** And if you think that, I could
3 probably find out if someone has done an analysis, if
4 they thought I suspected anything.
5 **MR. JEFFRIES:** Yeah, I'm already counting water
6 resources agencies.
7 **MS. LOPEZ:** I'm not sure that I contributed to
8 that, though.
9 **MR. YOUNG:** Okay. Any other -- more questions?
10 Okay. Thank you very much for your
11 comments.
12 **MR. YOUNG:** I think I've been handed another card
13 to speak out of order. Robert Johnson.
14 **MR. JOHNSON:** Thank you Chair Young and Board
15 members, my name is Rob Johnson, Assistant
16 General Manager with Monterey County Resource Agency
17 so to answer the question of a good deal of data has
18 been collected in Prunedale, has you know from the
19 environmental health has been from septic, at least in
20 that area. That data was also included along with some
21 other studies that was released yesterday.
22 **THE REPORTER:** Can you speak up a little, please.
23 **MR. JOHNSON:** Sure. I'm trying to move this
24 close.
25 **THE REPORTER:** Okay.

Page 258

1 **MR. YOUNG:** The clock is stopped, I just wanted to
2 let you know you have two minutes.
3 **MR. JOHNSON:** No problem. Two minutes is fine.
4 Your Board and our agency have similar mission
5 statements. Both focus on preserving water resources
6 for future and present generations our agency is a bit
7 different, though, we're not regulatory however our
8 strength is working with the community, ag and urban to
9 find solutions. I understand nitrate and groundwater
10 is an issue. Nitrate take a long time to show up in
11 the water systems, so what we're seeing now could be
12 the result of something in the water system for many
13 decades I agree with Mr. Thomas' slide that solutions
14 are available the agency has done a lot of work with
15 nitrates over the years and basically when I think
16 about this Ag Order I think about the three r's,
17 reading, writing, arithmetic. The three r's here is to
18 rely. To rely on good unbiased signs be wary of gross
19 overgeneralizations that come from comparing and using
20 data that may not be apples to apples, if you will.
21 Also be careful not to add more to this order than you
22 really should have. Or that can impinge on routine
23 flood control activities, for example. So the first is
24 to rely.
25 The second is to remember. Remember what has

Page 259

1 gone on in the past related to nitrate information and
2 the third, I'll rap it up, is to recognize. Recognize
3 the strength, power and value of collaboration. I'll
4 just stop there.
5 Thank you very much.
6 **MR. YOUNG:** Any questions? Thank you for your
7 time.
8 We're going to have a break for ten minutes.
9 (Brief recess.)
10 **MR. YOUNG:** Mr. Shimek, you're up next.
11 **MR. SHIMEK:** All right.
12 My name is Steve Shimek, S-h-i-m-e-k. And
13 I'm with Monterey Coast Keeper and the Otter Project,
14 and I'm also up here with several other environmental
15 groups that I'm working together with.
16 Before I kind of begin and start rolling into
17 the slides, I want to address that issue of, you know,
18 gosh, why couldn't we all come together like 2004 and
19 sing Kumbaya?
20 And, you know, I think the reason for that is
21 because that group, that was the first Waiver, and I
22 have knowledge of this because Kaitlin Gafney's
23 probably my best friend in the whole wide world, and
24 she was on that group, and one of things that she
25 mentioned was we put things aside. We deliberately

Page 260

1 said, you know, this is too difficult. We're gonna set
2 it aside. It's easy to sing Kumbaya if you set the
3 hardest issues aside. And we've decided to take those
4 issues up in this Board. So that's a little
5 background.
6 So, first of all, let's see. Let me clear
7 up -- what's this? You've seen many of these slides
8 before. I'm not a Restorationist, as some people have
9 said, you know, wanting to go in the way back machine
10 and get back here, but I do want to say that this is
11 the Lower Salinas River many years ago, water, riparian
12 vegetation, and fish.
13 **MR. JEFFRIES:** That was me, fishing.
14 **MR. SHIMEK:** I just turned 60, Russ, so I'm right
15 up there.
16 **MR. JEFFRIES:** I'm a couple days ahead of you.
17 **MR. SHIMEK:** And here's some of the water that we
18 have today. It is bad. It's really bad. And the
19 practices that we have out there today, some of them
20 are just atrocious. Some of them are really good, but
21 some of them are really bad.
22 This is runoff from, you know, into a ditch
23 and the water is just gone, you know, I mean, it's got
24 a ton of nitrate in it, it's blooming, and we're just
25 not respecting the range of beneficial uses that we

Page 261

A6028BD
PANEL HEARING MARCH 14, 2012

1 once respected for water.
2 And I think, that has led us to the problem
3 that we have today. It was in many of the agricultural
4 areas, the only beneficial use that has been respected
5 for water has been use for agriculture. And I think
6 that part of the push back right now is that many of
7 the groups that I'm talking to, are seeing that there
8 are other beneficial uses, habitat, recreation,
9 drinking water. Those are values that are important,
10 and those are values this Board protects.
11 We also have problems with sedimentation.
12 We've heard some stuff about, oh, your numbers as far
13 as stormwater are really bad, and you've got to do
14 something different. You've got to do something.
15 You've got it do something, because we've got serious
16 sedimentation problems that are flowing into our rivers
17 and streams, clogging them, choking them, making them
18 unusable for other beneficial uses. We haven't valued
19 our riparian and wetland habitats. This is Winds River
20 Channel. This was done -- I don't know if this was
21 done with or without a permit. I was told it was done
22 with a permit, but, you know, there's people that say,
23 defer to the other agencies. Well, this was apparently
24 a permitted bulldozing of a river channel. Our water
25 is suffering because of it. This is that same

Page 262

1 statewide report that was referred to earlier and,
2 Mr. Johnston, I do believe that it is skewed toward the
3 problem areas. I don't believe that it's a sampling of
4 just the problem areas, though. Big Sur is part of the
5 sample, Carmel, many rivers that are clean.
6 In other words, it's a snapshot with a little
7 bit of extra emphasis on the problem areas, but when
8 you look at this, 22 percent of our waters are highly
9 toxic. 22 percent of those samples. Many of those
10 sites are toxic every single time that they are
11 sampled.
12 Mr. Los Huertos said, well, you know, you
13 can -- the water quality will change over time. We're
14 talking places that are sampled and every single time,
15 they are toxic. It doesn't get much more cut and dried
16 than that, I agree with Ms. Cleary when she says, well,
17 the alternative is that we have no deal.
18 This is, again, you've seen this. I think,
19 Karen Worcester, actually put this up. This is
20 toxicity in the Lower Salinas. This is toxicity in the
21 Lower Santa Maria. I haven't seen many arrows pointing
22 up. It's getting worse. I don't see many arrows
23 pointing down. This is nitrate in the Lower Salinas
24 and this is nitrate in the Lower Santa Maria. We've
25 got problems.

Page 263

1 When we talked about the Tiering system, I
2 mean, I know, that this was wishful thinking, but my
3 thought was, you know, we've gone through all this kind
4 of machination to try to figure out who's in Tier 1,
5 who's in Tier 2, and who's in Tier 3. Let's just draw
6 a circle around the Lower Salinas and the Lower Santa
7 Maria and throw them all into Tier 3. That's our
8 problem area. We know it.
9 Frankly, that would be the most fair
10 approach, but we made some decisions through this
11 process whether it be to protect the small grower or
12 whatever that it led us to this Tiering structure,
13 which makes us rely on the larger operations. That was
14 a decision made long ago. We're living with it now.
15 Before now, the same people that agreed to that are now
16 calling it arbitrary. Yesterday, when the court came
17 out and it was a Harter report --
18 **MS. McCHESNEY:** Excuse me?
19 **MR. SHIMEK:** Yes.
20 **MS. McCHESNEY:** Are you reporting on a ruling of
21 the Harter report?
22 **MR. SHIMEK:** Mr. Barbeau's Harter report, and,
23 excuse me, but are you suggesting that this is not new
24 information?
25 **MS. McCHESNEY:** It's not.

Page 264

1 **MR. SHIMEK:** You actually said in the record that
2 if some of things that were in this report were based
3 upon the Los Huertos report, which wasn't in the record
4 at all.
5 **MS. McCHESNEY:** And the Los Huertos' oral comments
6 were in the February workshop, so it appears that
7 Mr. Shimek wants to discuss the report. And I don't
8 know how much you want to discuss it.
9 **MR. SHIMEK:** I think I have three or four slides.
10 **MR. YOUNG:** I prefer that you don't.
11 **MR. SHIMEK:** I guess I --
12 **MR. YOUNG:** So that's it. I mean, it's just best
13 that we avoid it.
14 **MR. SHIMEK:** So the most recent information you
15 don't want to allow into the record?
16 **MR. YOUNG:** It's not that. It's what is in the
17 record is in the records, so you just have to stick
18 with that.
19 **MR. SHIMEK:** One more sentence?
20 **MR. YOUNG:** Sure.
21 **MR. SHIMEK:** My one more sentence would be that,
22 to me, and I think what Mr. Jeffries was alluding to is
23 that the fact that the entire intent of public content
24 is to bring you, in essence, new information. What is
25 the point of having public comment, if -- I'm not

Page 265

A6028BD
PANEL HEARING MARCH 14, 2012

1 bringing in --
2 **MR. YOUNG:** I would say, it's not to bring us new
3 information, it's to comment on what's in the record,
4 and what's been provided.
5 **MS. McCHESNEY:** Well, Mr. Young, what I had said
6 earlier, was that I agreed with Ms. Dunham the report
7 itself should not be in the record, because it was not
8 provided before the cutoff date, but there is also, in
9 the provision of the Water Code that governs this kind
10 of procedure, that parties can provide rebuttal
11 information and can provide, um, you know, information
12 to support their statements, so it kind of depends on
13 what Mr. Shimek wants to talk about, but he is not the
14 person to put it in the record. But there is, you
15 know, discussions about Mr. Farr, Congressman Farr, and
16 his report, and it seems reasonable to at least talk
17 about it a little bit, but I don't know how much you
18 want to talk about it.
19 **MR. YOUNG:** Where do you draw the line?
20 **MS. McCHESNEY:** Um --
21 **MR. YOUNG:** Maybe to the extent you're proposing
22 to show some slides that are actually from the report
23 would be actually introducing part of the report, so it
24 would be better to talk about the report without
25 showing pages from the report.

Page 266

1 **MR. SHIMEK:** I would be -- I'm looking to the
2 chair.
3 **MR. YOUNG:** I think that's reasonable.
4 **MR. SHIMEK:** Okay. Maybe, how are we going to do
5 this? Click through them? I'm asking for solutions.
6 **MS. McCHESNEY:** Yes, just click through them. My
7 suggestion is that we will make sure that the record
8 does not include those slides, as well, and you can say
9 whatever you want to say.
10 **MR. SHIMEK:** Okay.
11 **MR. YOUNG:** Do you really need them?
12 **MR. SHIMEK:** I think I need them to rebut some of
13 the things that have been said. In other words, some
14 things that have been said are things, such as, it's
15 not agriculture. That's the problem.
16 And some of the things that have been said is
17 that, you know, that the nitrate problem is the legacy
18 and it's not getting worse, that we don't have data,
19 you know, and some of the things said are that, you
20 know, that water systems, and things like that, and
21 there's been -- not clarity on which water systems and
22 stuff. And I think we can talk about the -- what I
23 want to talk about is the trends. I want to talk about
24 where it's coming from. I want to talk about the fact
25 that it is impacting many, many hundreds of thousands

Page 267

1 of people.
2 **MS. DUNHAM:** May I make a comment?
3 **MR. SHIMEK:** Sure.
4 **MS. DUNHAM:** Thank you.
5 Tess Dunham for the record. With respect to
6 our objection, I would contend that what, as Mr. Shimek
7 has just described, what he intends to discuss is new
8 evidence, and to me, that is a huge demarkation between
9 what we had done and what he is looking to put into the
10 record. And because this is new evidence, technical
11 information, and evidentiary, you know, being used in
12 the matter of evidence in order to rebut and that is
13 why we would have an objection to its inclusion even in
14 an oral format. This is a huge report. It's just been
15 released, and no one has had the opportunity to review
16 it in its entirety in order to actually rebut any of
17 the information in it.
18 Thank you.
19 **MS. McCHESNEY:** I just want to add if you will let
20 me read from the regulations that apply to this type of
21 proceeding.
22 **MR. YOUNG:** Go ahead.
23 **THE REPORTER:** Can you speak up a little bit?
24 **MS. McCHESNEY:** Sorry. Rebuttal testimony
25 generally --

Page 268

1 **MR. YOUNG:** What are you reading from?
2 **MS. McCHESNEY:** I'm reading from the State Board
3 Meeting Regulations that apply to adjudicative
4 proceedings at the Regional Water Quality Control
5 Board.
6 **MR. YOUNG:** Which number, which section number?
7 **McCHESNEY:** Section 684.4 (f).
8 **MR. YOUNG:** (f)?
9 **MS. McCHESNEY:** Yes.
10 "Rebuttal testimony generally will
11 not be required to be submitted in writing,
12 nor will rebuttal testimony and exhibits be
13 required to be submitted prior to the start
14 of the hearing."
15 So Mr. Shimek describes the purpose of his
16 wanting to talk about that as making a decision whether
17 that is a reasonable rebuttal.
18 **MR. YOUNG:** Well, I think rebuttal testimony, he
19 can come in, but still, I think, the details of the
20 report should not come in. I think, if you want to
21 draw a conclusion to the report to support your
22 position, I think that's fine and likewise, if you're
23 done, you have another five minutes of rebuttal time if
24 you're going to be able to do what you want to in
25 rebuttal, however you want to attack this report or use

Page 269

A6028BD
PANEL HEARING MARCH 14, 2012

1 it. I don't know.
2 **MS. DUNHAM:** Okay.
3 **MR. YOUNG:** I'm just trying to call the balls and
4 strikes here. All right. It's not easy.
5 Okay. So the details I'd like to just leave
6 out, but if you want to draw or want to tell us about
7 the conclusion in the report to support your position,
8 I think that's fair game.
9 **MR. SHIMEK:** All right. Now I'm trying to force
10 through, I truly am.
11 **MR. YOUNG:** I don't want to see tables from the
12 report and that kind of evidence in detail, but if you
13 want to give us conclusions from the report that
14 support your rebuttal testimony, to counter what has
15 been said, okay.
16 **MR. SHIMEK:** Okay. I'll avert your eyes. I
17 don't -- I mean, how am I supposed to do it?
18 **MR. YOUNG:** Just go through it.
19 **MR. SHIMEK:** You want me to go through it?
20 **MR. YOUNG:** No. No.
21 **MR. SHIMEK:** I'm trying to figure out what --
22 **MS. McCHESNEY:** Now summarize your --
23 **MR. SHIMEK:** Okay. Thank you.
24 My summary of what I had hoped to show you
25 and illustrate to you was that nitrate pollution in

Page 270

1 groundwells and in wells, both drinking water wells and
2 in irrigation wells is widespread and supported by many
3 studies, including recent studies.
4 Um, the other thing that I want to suggest to
5 you is that there are -- there's information out there
6 about inputs and outputs. And that material, the
7 inputs, is by far the vast majority is agricultural
8 irrigated, not cattle not -- it's irrigated ag inputs.
9 There is information, both recent and old that shows
10 that agriculture is the problem when it comes to
11 nutrient loading into surface waters and into
12 groundwaters.
13 We have seen this slide. This slide is of
14 what's happening in our environment. In our
15 environment, there are animals that are dying, and they
16 are dying because nutrient-rich water is blooming in
17 fresh water systems, washing out to sea and killing
18 those animals. These are problems in our environment.
19 One of big changes that has happened within me, as a
20 result of this process, is a greater appreciation,
21 frankly, for the human impacts of this pollution.
22 This was a study that was done earlier, and
23 this study basically talked about -- and I have used
24 this slide before, and this has been in the record --
25 that what we've got is -- this is about the San Joaquin

Page 271

1 Valley, but the same information is essentially true,
2 and we all know it, for the Salinas and Santa Maria
3 Valleys.
4 People are getting hurt while you delay. The
5 environment is degrading while you delay. I truly
6 believe that. This a problem, and it's got to be
7 addressed.
8 I'll be quick through one more slide.
9 The Central Coast Regional Water Quality
10 Control Board sent us a letter back in 2008 and said,
11 "Here are the things that we want to do with this
12 Order." And it was a -- and I just want -- I won't
13 read it, I want everyone to read it here: And it is my
14 belief that we can all stand back and we can, kind of,
15 salute the flag and say that these are all good things
16 and yet when I was part of the panel discuss, just last
17 week, I think it was, an agricultural representative
18 said, "These are the things that got us mad." This is
19 apple pie. This is what you are sworn to protect:
20 Aquatic habitats, toxicity, nutrients, people's
21 health. This is important stuff. This is what we
22 should be about. But I guess, we can't agree on this.
23 While Congressman Farr's comments -- he stood up and
24 talked about how important this it, and while I respect
25 his comments and take them to heart, this process is

Page 272

1 happening under Porter-Cologne. It's not happening
2 under the Clean Water Act. And he's just another guy,
3 once it turns into this process. And I know he's not,
4 but he should be. This is not a Federal process. This
5 is what we should be focusing on.
6 I've also shown this before. This is in a
7 staff report This was September. And this, basically
8 says, so in other words, if you stand back and you say,
9 okay, that previous slide was apple pie, then the only
10 conclusion that you could come to is if the only
11 proposals that serve up that apple pie are the
12 environmental proposal that I was a part of, and Staff
13 Proposal. Those the only ones that do. The other
14 proposals do not.
15 There was an opinion, I assume Frances wrote
16 it. I'm not sure, but that was in the Staff report of
17 which was a legal analysis of the Ag Alternative and,
18 basically, it says that it's not legal for a couple of
19 different reasons. One reason was it creates disparity
20 in group and in equities. The other reason that it,
21 basically, says is because it doesn't comply with Water
22 Code, which was one of the things that we are
23 talking -- that we were discussing earlier.
24 Monitoring is required, and monitoring must
25 be reported. It says that in Code. Ms. Dunham left

Page 273

A6028BD
PANEL HEARING MARCH 14, 2012

1 that half of the sentence out. It also says that
2 monitoring must be appropriate, and I'm using plain
3 language here, it must be appropriate to actually
4 assign, you know, who's responsible. It does talk
5 about cooperative monitoring, but it addresses
6 cooperative monitoring in a sense that it still must be
7 scaled in a way that you can assign who is the
8 problem. But she left that out, that's important
9 stuff.

10 Many growers -- Bob Horn has become a good
11 friend of mine -- and many growers are committed to
12 good water quality and he's one of them, but Farmers
13 for Water Quality is doing a number of things that I
14 think is important.

15 First of all, they have actually said that
16 their strategy -- some of them have actually said that
17 their strategy is to get the 2004 Order back. I
18 maintain, yes. And on their websites, it actually says
19 their petition and ask for a stay. It says that.

20 So my point being, if the end game here is to
21 go back to 2004, how are you going to get the good
22 ideas of Marc Los Huertos and Ross Porter? There will
23 be no incentive for those ideas under the 2004 Order.

24 If we have good projects stripped out of the
25 frame of that, you know, thing that says, okay, you're

Page 274

1 not going to have to report, I think we'll have
2 success. That is encapsulated in the current Order.
3 It allows for these projects to come forward, and be
4 proposed, be evaluated, and be approved. It's in
5 there. I want Ross Port's wetlands. Frankly, I want
6 Mr. Los Huertos' to have some successful projects.
7 They need to be monitored. They need to be written
8 down. They need to be properly scaled. They need to
9 be properly submitted to. But I want those projects --
10 the Staff Proposal allows those projects. The two most
11 important letters that have been submitted so far, in
12 my opinion, are the Monterey City letter, which
13 basically says, why in the heck should we do stuff
14 if -- stormwater stuff, when Ag is getting a free
15 pass? I think that's an important question, and I hear
16 that from ASPS people as well.

17 It makes it impossible for you to govern and
18 regulate if you do not regulate the biggest
19 discharger.

20 The second most important letter, I think, is
21 the GPR letter, not the GPR -- The California
22 Department of Public Health where they said, they think
23 that this is good idea. They think the problem is
24 serious. They think you need to go ahead and pass this
25 Order.

Page 275

1 So you have a municipality that's standing
2 back and saying, why are you picking on us when you're
3 giving somebody else a free pass? And that letter is
4 in my slides, so you can read it. And you've got
5 California Department of Public Health saying the
6 problem is serious, and you need to go ahead.

7 The environment is suffering, people are
8 at-risk, and you need to pass this Order. You need to
9 pass it at this meeting. I just -- I can't stress that
10 enough. I've got a ton of passion for this, but this
11 has gone on long enough. If you think that between now
12 and September, the political system, it's going to get
13 easier for you to pass something in September, you're
14 crazy. I have been called in to departments and
15 agencies that I've never been called in before to talk
16 about this. It's going to get harder in September.
17 This is your moment. The time is now. The Staff
18 Proposal has been watered down enough. The Staff
19 Proposal allows Mr. Los Huertos and Mr. Clark to do
20 their projects. Their projects are good. They can be
21 allowed in the Staff Proposal. Let's move ahead.
22 Let's start protecting the environment. Let's start
23 protecting people.

24 Does anyone have any questions?

25 **MR. YOUNG:** Mr. Delgado and then Mr. Johnston.

Page 276

1 **MR. DELGADO:** Steve. That's you, Steve.
2 The point on the monitoring, you said
3 monitoring has to be recorded, and it has to be
4 reported, and it has to be appropriate to assign who is
5 responsible. And is that specified in the Water Code
6 sections that, or in the MPS Policy that it has to be
7 reported to an individual basis?

8 **MR. SHIMEK:** No. So, first of all, I'm not a
9 lawyer, Mr. Delgado, and I think Mr. Ali comes up and
10 speaks in a few minutes, and will cover this directly,
11 but I read the letterhead, and at least the way I read
12 it, is it says that "Water Quality Monitoring results
13 will be recorded." And I think that's an important
14 distinction. And I just take it as plain face.

15 The second thing is that I think that it does
16 say, and again I'm offering plain English kind of
17 reading of, and the way I read it, it basically says
18 that, yes, third-party monitoring is appropriate, and
19 that's how they got the third-party monitoring. Water
20 Quality Preservation Inc., is a third party. They did
21 the monitoring program and they reported the results to
22 the public and the Regional Board. And it's -- and I
23 think it's that transparency that leads to
24 accountability. It's my belief that the only way that
25 what Mr. Clark and what Mr. Los Huertos wants to do,

Page 277

A6028BD
PANEL HEARING MARCH 14, 2012

1 what they want to do, the only way they get to do it is
2 if there's the back stop of good regulation.
3 Now, the point of, is there a way around
4 individual reporting? I believe that if a project
5 comes forward, and let's just say it's an engineered
6 wetland, because that's easy to think of.
7 Let's just say an engineered wetland comes
8 forward and says, we are going to take care of the
9 discharge of these eight farms. And so you've
10 identified the eight farms, and those people have
11 signed on, I think you can water quality monitoring
12 that moves off the edge of the farm and becomes
13 ethicacy of the project.
14 You still have accountability because those
15 eight farms, you know, have signed on the dotted line.
16 You're still doing monitoring that's measuring how well
17 they're performing. That's my solution to moving off
18 of the farm.
19 **MR. DELGADO:** And in that example the monitoring
20 would be above, inside, and below the wetland
21 treatment?
22 **MR. SHIMEK:** You know, I think inside is so -- I
23 think above and below. I don't know about inside.
24 **MR. DELGADO:** Okay.
25 **MR. YOUNG:** Mr. Johnston.

Page 278

1 **MR. JOHNSTON:** I was actually curious about what
2 you were saying about monitoring, too. And were you
3 applying that groundwater monitoring, as well? The
4 groundwater monitoring need to be reported it needs to
5 be reportee to individual operations?
6 **MR. SHIMEK:** I think that there's additional --
7 so, again, I'm going to throw in the caveat again, that
8 I'm not a lawyer. But, I think, that there is
9 additional law on water quality monitoring, basically,
10 the location of the well cannot be reported and so --
11 and I agree that the individual people, um, that could
12 lead to the location, so in other words, as I
13 understand it, what that's moved to is a
14 quarter-by-quarter mile square, and you have to refer
15 to it within the square somehow. That's the way it's
16 been interpreted so there is additional law about that.
17 **MR. JOHNSTON:** As a practical matter, not a legal
18 matter, one of the things I've been thinking about is
19 aggregated groundwater monitoring, as long as it's what
20 we need -- we, the Regional Water Quality Control
21 Board, from groundwater monitoring, is to really
22 understand what's going on down there and knowing the
23 results from underneath an individual farmer's farm
24 doesn't necessarily assign accountability, because that
25 could have be from a lot of different sources because

Page 279

1 that stuff moves sideways, when we're doing
2 groundwater.
3 **MR. SHIMEK:** I agree.
4 **MR. JOHNSTON:** So one of the concepts that I was
5 thinking about and talking about with Staff is
6 aggregated groundwater monitoring, as not necessarily
7 every single well, not necessarily every single farmer,
8 as long as it gives us a fine enough detail,
9 geographic, and it's really a three-dimensional
10 geographic detail, to understand what's going on down
11 there in terms of nitrates and sets some baselines.
12 Do you see a problem with that?
13 **MR. SHIMEK:** Not in the way you've described it.
14 There are cautions that I would have.
15 One caution is that I don't think that all
16 groundwater is old groundwater. I think some of it
17 responds -- some groundwater responds very quickly.
18 The San Jerardo experience taught us that --
19 San Jerardo, as I've heard it called, is when the field
20 went fallow above it and this could have been about the
21 well, you know, back flows in the well or something.
22 But when the field went fallow, the water quality
23 improved. It was just that fast. So I think that as
24 an approach, I agree with you. I think that there are
25 instances where you're going to want to know the

Page 280

1 ethicacy of what's going on with them.
2 **MR. JOHNSTON:** I just have to say, it could well
3 have been at San Jerardo that it was a field four farms
4 over going fallow that did that, too. I mean, I
5 understand there was a time connection to the fallow
6 season.
7 **MR. YOUNG:** Okay.
8 **MR. JOHNSTON:** Done.
9 **MR. SHIMEK:** So Water Code section?
10 **MR. YOUNG:** Okay. You're done.
11 **MR. SHIMEK:** Unless there are any other questions
12 for me.
13 **MR. YOUNG:** There aren't any.
14 **MR. DELGADO:** You want to ask him about the Water
15 Code?
16 **MR. YOUNG:** I'm going to call him next. Now let
17 him give us the Water Code presentation, okay.
18 **MR. DELGADO:** Thank you.
19 **MR. YOUNG:** I'm trying to retain one set. What
20 good would it do you now?
21 All right. So that concludes the
22 presentations that asked for additional time, with
23 people mixed in who had to leave early.
24 What we are going to do now is -- I think, I
25 have about 50 cards at two minutes each. That's, you

Page 281

A6028BD
PANEL HEARING MARCH 14, 2012

1 know, 100 minutes. We figured two hours to complete
2 this portion. We're going to probably end tonight at
3 that point. It's just too much, I think, for us to sit
4 up here and be able to have staff take some time to
5 review Ms. Dunham's presentation, which they're going
6 to want to do, so we could have a discussion about it.
7 I would propose to you, we continue this
8 first thing in the morning and we would go right to the
9 Staff's presentation and recommendations on what they
10 heard. Ms. Dunham will have her five-minute rebuttal.
11 Then the Board --
12 **MS. McCHESNEY:** She has to rebuttal first, and
13 then Staff's recommendations.
14 **MS. DUNHAM:** Staff always gets the last word,
15 Chair.
16 **MR. JEFFRIES:** Get used to it.
17 **MR. YOUNG:** Okay.
18 **MS. DUNHAM:** But I like your process, Sir.
19 **MR. YOUNG:** All right. So that's what we are
20 going to do.
21 Everyone that's still here is going to speak,
22 unless someone is are going to leave at the break. And
23 then just going to have dinner and that's it for
24 tonight.
25 So we will now proceed with our guest

Page 282

1 speakers.
2 **MR. JEFFRIES:** I have a request here.
3 **MR. YOUNG:** Yes?
4 **MS. WHITAKER:** I have to leave for another meeting
5 So if you wouldn't mind pulling my card out of there.
6 **MR. YOUNG:** Okay. And your name?
7 **MS. WHITAKER:** Gina Whitaker.
8 **MR. YOUNG:** Okay.
9 **MR. JOHNSTON:** Mr. Chairman --
10 **MR. YOUNG:** Yes?
11 **MR. JOHNSTON:** -- you may want to state where the
12 meeting is going to be tomorrow.
13 **MR. YOUNG:** That's a great question.
14 **MR. JOHNSTON:** It's Hector Hernandez' question.
15 I can't take credit.
16 And to clarify I was suggesting that we take
17 care of our action items tomorrow first, because we
18 will have people showing up for that, as a noticed
19 meeting. And then the Board would take up those issues
20 at our office conference room, which is 895 Aerovista,
21 the address is in the Agenda, but notice for
22 continuation for tomorrow's meeting, regular meeting,
23 starts at 8:30. Like I said, we'll take care of the
24 action items tomorrow first.
25 Do we have an approximate sense, then, when

Page 283

1 the Ag Folks can expect to be back? I don't
2 particularly want to get people here at 9:00, if we are
3 not going to get to them until 1:00 in the afternoon.
4 **MR. KEELING:** Right. Um, I'm the optimist. I'd
5 say there wouldn't be need to show up, say, until
6 10:30.
7 **MR. YOUNG:** Yeah. It's a guess. And if you --
8 **MR. KEELING:** Show up at 10:30, and we may have
9 already started.
10 **MR. YOUNG:** It's just a guess. That's --
11 **MR. KEELING:** At least 10:00.
12 **MR. YOUNG:** It's a reasonable guess.
13 **MR. KEELING:** And the hope, Mr. Chairman, again,
14 would be that we conclude the public comments tonight.
15 **MR. YOUNG:** That's what we're going to do.
16 **MR. BRIGGS:** All right.
17 **MR. YOUNG:** All right.
18 Mr. Schmidt?
19 **MR. SCHMIDT:** It makes a larger difference whether
20 you take this up early tomorrow morning and we book a
21 hotel room, or you take it up tomorrow afternoon and we
22 go home and come back. Because while I truly enjoy
23 San Luis Obispo, and it's a wonderful tourist town, I
24 didn't come prepared to enjoy the sites while you take
25 up your action, if you're not going to get to this

Page 284

1 until 4:00 in the afternoon, tomorrow.
2 **MR. YOUNG:** We are not going to start this at
3 4:00 o'clock tomorrow. I'll tell you that.
4 **MS. McCHESNEY:** Well, you could pick a time
5 certain that it wouldn't start before, you know.
6 **MR. BRIGGS:** Not before 10:00.
7 **MR. YOUNG:** Not before 10:00, but the action item
8 will take around --
9 **MR. KEELING:** Actually, Roger is in a better
10 position to answer that than me.
11 **MR. BRIGGS:** Initially, I said 10:30, to make sure
12 we don't start before. I would say 10:00, then. We
13 wouldn't start before then. But I think 10:30 is more
14 realistic.
15 **MR. YOUNG:** Okay.
16 10:30.
17 **MS. McCHESNEY:** We can say we won't begin before
18 10:30.
19 **MR. YOUNG:** Okay. All right. Come on up,
20 Ms. Whitaker. And then Nathan Ali.
21 Is Mr. Merkley still here? He'll be next,
22 and then Kay Mercer.
23 Go ahead. Gina Whitaker; right?
24 **MS. WHITAKER:** Yes. Thank you very much.
25 Pleasure to address the Board.

Page 285

A6028BD
PANEL HEARING MARCH 14, 2012

1 My name is Gina Whitaker. I represent a
2 voice from the faith community Unitary Universalism, in
3 particular. I'm not a farmer. I'm not a regulator.
4 I'm -- but I believe the most important voice the
5 religious community can bring to this discussion is
6 that safe, affordable and accessible water is a basic
7 right for everyone.

8 Much of the population that will be affected
9 by your decision today is made up poor Latino and
10 immigrant agriculture workers. I'm not sure they're
11 represented here today.

12 Traditionally, these populations have been
13 marginalized in many ways, but their health is as
14 important as the health of any population in the
15 Central Coast or in the Central Valley.

16 As Unitarian Universalists it's our moral
17 imperative to support clean, safe water, as a basic
18 right for any community, regardless of its social or
19 economic status or ethnicity.

20 The responsibility to protect water safety
21 does not lie with health departments or
22 municipalities. It lies squarely on the shoulders of
23 this Board. This past weekend, I had the privilege of
24 attending a moving film about The Life and Work of
25 Aldo Leopold, American Conservationist.

Page 286

1 Dr. Leopold wrote about developing a land
2 ethic, living with the land, rather than merely on it.
3 In this dilemma, I believe we need to carefully examine
4 our land ethic, as that relates to our use and abuse of
5 our drinking water supplies.

6 Please do the right thing today for tomorrow
7 in voting for the most effective and protected way
8 possible and avoid further delays.

9 Thank you.

10 **MR. YOUNG:** Thank you for your comments.

11 Okay. Nathan Ali, Danny Merkley, Kay Mercer
12 Darlene Din.

13 **MR. ALI:** Thank you, Mr. Chair. I'm going to
14 scoot down a little bit.

15 My name is Nathan Ali -- thank you so much.
16 That will be better for my posture.

17 My name is Nathan Ali. I'm an attorney with
18 The Environmental Defense Center. I've been working on
19 this issue for quite some time, and looking for a
20 potential resolution tomorrow.

21 We're here for two reasons. The old Waiver
22 has expired. It did so almost three years ago. And as
23 your Staff and others have pointed out, the old Waiver
24 is no longer adequate to protect waterfall, and we need
25 to improve it. So with those two things in mind, I

Page 287

1 once again urge you to take some action tomorrow, to
2 vote, specifically, for the Staff Proposal, but at the
3 very least, please keep the ball moving forward.

4 One thing, I think, we can all agree on is we
5 want to improve water quality. One thing we haven't
6 agreed on, is all the talk we've done, in the last
7 three years, hasn't gone anywhere to directly improving
8 water quality, and it's time for the rubber to meet the
9 road.

10 That being said, as I mentioned in my
11 comments in February, once you make a decision, we're
12 very happy to look forward to the next Waiver. It's
13 three or four or five years down the road. We might as
14 well start getting working on it immediately and we
15 stand ready to do that. There are a lot of good ideas
16 in this room, a lot of good proposals that may have
17 some merit and we'd like to see them potentially moved
18 forward. We didn't want to spend the next six to nine
19 months talking about them, we want to do something
20 now.

21 That's really my message. I will very
22 briefly address the questions that were raised
23 earlier. I'll just quote the Water Code. What I
24 believe that Mr. Shimek was referring to earlier. That
25 first thing is simply that, I'm going to

Page 288

1 quote, "monitoring requirements shall be designed to
2 verify the adequacy and effectiveness of the Waiver
3 conditions" and that's what he was getting at.

4 Monitoring conditions must be such to actually verify.
5 And if I may take just one more second --

6 **MR. YOUNG:** One second. Tell us.

7 **MR. ALI:** -- to answer the previous question. So
8 we agree with counsel's analysis of the legality --
9 full legality of the Ag Proposal, but I think one of
10 our biggest sticking points is this, again, requirement
11 monitoring results shall be made available to the
12 public and it's the best scenario where you are
13 aggregating the margin results, and then reporting
14 them, that we feel runs into legal problems.

15 Monitoring the aggregate, as Mr. Johnson mentioned
16 earlier, might be a different scenario. But, in
17 specific, the idea of monitoring, collecting those
18 results, messing around with them, and then presenting
19 them as a whole, we believe does not follow the letter
20 of the law.

21 Thank you very much.

22 **MR. YOUNG:** Thank you.

23 Danny Merkley, Kay Mercer, Darlene Din and
24 Norm Groot.

25 **MR. JEFFRIES:** Before we go forward, can I have a

Page 289

A6028BD
PANEL HEARING MARCH 14, 2012

1 point of clarification with counsel?
2 **MR. YOUNG:** Yes.
3 **MR. JEFFRIES:** The gentleman just mentioned that
4 the 2004 Order is expired. It has been continued. Is
5 that correct?
6 **MS. McCHESNEY:** Yes. The board continued --
7 renewed it for a certain period of time and the
8 Executive Officer renewed it and Mr. Ali and his
9 clients have filed a petition with the State Board of
10 Resources Control Board challenging the Executive
11 Officer's Extension of Waiver, so I think he's just
12 stating his legal opinion about that.
13 **MR. JEFFRIES:** Well, I didn't want to focus things
14 if the Order had expired.
15 **MS. McCHESNEY:** No. It's still in effect.
16 **MR. JEFFRIES:** Okay. Thank you.
17 **MR. YOUNG:** Okay. Mr. Merkley.
18 **MR. MERKLEY:** With the exception of -- oh, Danny
19 Merkley, California Farm Bureau.
20 With the exception of moustaches, I believe
21 less is more, so I will be extremely brief, and just
22 comment on the fact that all the Staff's time, all the
23 time that has been expended to get us to here is simply
24 a result of a thought process. Not necessarily any one
25 person's thought, but it is a thought process that has

Page 290

1 caused us all to bump around like a bunch of blind dogs
2 in a meat house. And this is why, every single day,
3 I'm -- in legislature, I'm hearing criticism and snide
4 remarks about the Regional Water Quality Control Board
5 and those legislators and legislative Staff, and that
6 concerns me.
7 Thank you.
8 **MR. YOUNG:** Thank you for your comments.
9 Kay Mercer, Darlene Din.
10 **MS. MERCER:** Before I begin, I had a request from
11 a member of the audience, if we can remove photos of
12 Mr. Shimek's presentation.
13 **MR. YOUNG:** I haven't looked at it in 20 minutes
14 until you mentioned that. Now I'm looking at it
15 again.
16 **MS. MERCER:** Sorry. Okay.
17 Hello, my name is Kay Mercer and I am
18 Kern Finance. I was reviewing past letters from the
19 past three years.
20 In my letter of April 10th, I identified 2
21 categories for program deficiencies. I found the
22 monitoring requirement in six areas of data
23 deficiencies with the proposed Draft Order.
24 Since then, Staff has addressed only one of
25 the program deficiencies, and that was to scale back

Page 291

1 the Tier requirements. Now, granted, scaling back on
2 the number of Tier 3 growers did reduce the acute
3 impact, but the number of the Tier 3 growers cannot be
4 verified, and there is considerable Staff discretion to
5 add more growers during the Tier.
6 Hence, my criticism stands. It is assumed
7 that the growers, with infinite practices, Marc
8 Los Huertos talked about how we don't have sufficient
9 practices.
10 Um, March 9th, 2011, I sent a letter to the
11 Board, basically, quantifying the positive things that
12 growers have done, and that was -- I used three files
13 of evidence to collaborate that information.
14 I also identified the 11 barriers to a
15 management practices, implementation, and development.
16 This information was considered to be credible enough
17 that it formed a basis for a good chapter that was
18 published by the American Chemical Society.
19 As you move forward, you may want to go back
20 to that and talk about, why are we having so much
21 difficulty matching management practices with our
22 problems?
23 The bottom line to my review was that in
24 spite of presentations, the State quarter input has not
25 necessarily been reflected in the changes in the

Page 292

1 Order.
2 So the last thing I want to say is what if
3 the waiver process was improperly implemented, the
4 point source approach fails to deliver, there's not
5 enough technical capacity, what then is the Board's
6 legacy? Please consider Marc De Los Huertos'
7 presentation and proposal, as you make your decision.
8 Thank you.
9 **MR. YOUNG:** Thank you.
10 Darlene Din and Norm Groot, and Kirk Schmidt,
11 Michael Marsh.
12 **MS. DIN:** Sorry, Good afternoon, Board members.
13 First of all, I'd like to open my comments
14 with, everyone deserves the right to an access of safe
15 and clean drinking water, and no one in agriculture has
16 ever made any other statement than that. Why the
17 coalition approach will meet water quality improvement,
18 from my point of view is there's been a lot of
19 discussion on on-farm monitoring, meaning water quality
20 improvements. And I just want to hit one point that
21 really hits to the heart of some of this challenge.
22 Farming is fluid, and we have multiple master
23 leases, and then we have subleasing, we flip and rotate
24 with berries and vegetables and some will be Tier 2,
25 some will be Tier 1 and some will be Tier 3 growers.

Page 293

A6028BD
PANEL HEARING MARCH 14, 2012

1 Part of why Dr. Los Huertos' work is so
2 important, because it's an approach in which you'll
3 have print analysis, and you'll apply it to a systems
4 approach, where the Staff's approach while they were
5 dealing with issues, the Tiering system inherently is
6 flawed.

7 If you have a strawberry grower that's maybe
8 a Tier 2, and flips in with a vegetable grower the next
9 year that's 3, that has different, maybe you follow one
10 here, maybe you do another crop, had a Tier 1 in
11 there. Over a ten-year period, you may have one or two
12 years sporadically by two different operators of
13 monitoring. Explain to me why that data has value?
14 It's in a vacuum. It has no basis to cause and effect,
15 and actually do roots on the ground improvement.

16 The other issue I want you -- to let you know
17 I personally spent a lot of time with the environmental
18 community, in different aspects of conservation,
19 community and whatnot, and I think working in teams is
20 really helpful. I appreciate, I learned from them, I
21 appreciate work with labor.

22 I'm sorry that at this stage I learned that
23 one of my best allied partners advocate on the other
24 side, I can't sit at the table with, and that would be
25 helpful to make it happen. Make the legacy to improve,

Page 294

1 please consider the Marc Los Huertos recommendation.
2 And thank you all.

3 **MR. YOUNG:** Thank you, Ms. Din.
4 Norm Groot.

5 **MR. GROOT:** Good morning.
6 My name is Norm Groot, G-r-o-o-t. I'm the
7 Executive Director for Monterey County Farm Bureau, and
8 I think we all want the same thing, and we're all
9 trying to get to that point.

10 There are so many issues involved in this
11 Ag Order that remain in question, and I just want to
12 point a few of those.

13 There is conflicting data sets that
14 mischaracterize water quality, particularly in Salinas
15 Valley, in particularly the groundwater. There's
16 widely varying estimates as to costs, as to how farmers
17 will be impacted and how much it will cost them.

18 There's unachievable targets for compliance
19 not based on size or sound, or proven BMPs. There is
20 prescribed buffers that are interpreted as the only
21 option that Farmers will have, and operators that have
22 been the most proactive in the last ten years and have
23 improved water quality will be penalized the most,
24 simply because of their size, and they'll end up in
25 Tier 3.

Page 295

1 And, obviously, creativity is being stifled
2 through this process. The regulated community is here
3 telling you that this won't work, and set us up for
4 failure. We have a proposal that is widely supported
5 within our community and will achieve water quality
6 improvement. Instead of regulating water quality and
7 every ditch and retention on them, let's presume that
8 there's a larger picture here, that of watershed water
9 quality that could be achieved through growers
10 cooperatively working together to manage solutions,
11 individual monitoring and reporting and reporting does
12 not achieve cooperative solutions.

13 Please consider the Ag Alternative and
14 included in the agricultural Order so that -- with that
15 language, so that growers can have a choice in how they
16 manage their water quality improvements. Thank you.

17 **MR. YOUNG:** Thank you, Mr. Groot.
18 Kirk Schmidt.

19 **MR. SCHMIDT:** Thank you. I'm Kirk Schmidt,
20 S-c-h-m-i-d-t. I'm the director of the Central Coast
21 Water Quality Preservation -- Preservation, Inc.
22 That's the cooperative monitoring program on behalf of
23 the agriculture for the present waiver and the future
24 waiver, and we have been working with the Staff in
25 detail and repeatedly since 2005.

Page 296

1 Starting in August of last year, we started
2 working with Staff to see if we can get the adoption of
3 the MRP for the Cooperative Monitoring Program to be
4 inactive, so we could start that program this January.
5 If took us six months, between August and January, to
6 work out the details so we can get it started in time.

7 We have not commented on the scope of the present
8 Draft, but we have commented on monitoring issues and
9 you have a very difficult monitoring program envisioned
10 in Tier 2 and Tier 3. It's difficult to apply if you
11 have a 200-acre farm, you may have 20 10-acre plus,
12 each farm two and a half times per season, that's 50
13 plus. It's difficult to see how the farmers will have
14 time between now and October, which is when the Waiver
15 calls for the MRP, which is a monitoring program for
16 individual monitoring to be enacted.

17 If you adopt the Waiver now, the dilemma is
18 that no matter how farmers read this, they still have
19 to interact with Staff to come up with a monitoring
20 program that is consistent with what Staff envisions.
21 This means that they're asking for lots of
22 communication. This has been difficult during this
23 period of time because there's been an inability for
24 anyone to communicate, in writing, with Staff because
25 of the prohibition of writing about the Waiver,

Page 297

A6028BD
PANEL HEARING MARCH 14, 2012

1 however, that also puts the farmers behind the curve as
2 far as the ability to develop a monitoring program that
3 could be in place in October. It's very important that
4 Staff and growers have an opportunity to consult with
5 each other on the scope of the Tier 2 and Tier 3
6 monitoring in time to get this rolled out so there is
7 certainty about what they're expected to do.
8 Thank you very much.
9 **MR. YOUNG:** Thank you for your comments.
10 Michael March.
11 **MR. JOHNSTON:** Can I ask a question, is everybody
12 getting two minutes now or do they --
13 **MR. YOUNG:** Yes. No, they're getting two minutes.
14 **MR. JOHNSTON:** Oh, okay. I had thought the early
15 people were getting two minutes and everybody else was
16 getting three.
17 **MR. YOUNG:** Not with the number of cards we ended
18 up with and those are people that had to leave.
19 **MR. JOHNSTON:** All right. You're the chair.
20 **MR. YOUNG:** Yes. Go ahead.
21 **MR. MARSH:** Hi. My name is Michael Marsh,
22 M-a-r-s-h. I'm directing attorney of California Rural
23 Legal Assistants in Salinas. We represent farm workers
24 and other low income people.
25 Most of clients earn between 12- to \$15,000 a

Page 298

1 year. They are in a very vulnerable, precarious
2 position in terms of their housing, in terms of their
3 employment, in terms of their educational
4 opportunities, and really, they're innocent victims in
5 this water battle. They're the people who have the
6 most at risk. They are the people that will suffer the
7 most because they have very, very limited options.
8 They can't afford bottled water. They can't afford
9 home filtration systems, water testing, and most of
10 them can't move anywhere unless it's to chase a crop
11 from one county to the next.
12 So those are the people who see this as a
13 very urgent issue. And I've sat here all day long.
14 This is the first time I have been a part of this
15 process. My organization can get a lot more involved
16 in this process. And I just don't hear the urgency in
17 people's voices and I really expected to hear a lot
18 more urgency. I think this is something that we have
19 to do and we have to do it now. And I urge the Board
20 to pass the proposal by the Staff.
21 And then just on a personal front, I live
22 very close to Upper Carr Lake. I run around it two or
23 three times a week. I run along with my boys on
24 Gabilan Creek and Navidad Creek, and it's very, very
25 hard for me, as a father, with a six- and

Page 299

1 eight-year-old to explain to them why they can't touch
2 the water. Don't go in it. Don't touch that. Don't
3 splash in it. And it's very difficult, and I look
4 forward to the day that I can let my boys play in those
5 two water bodies.
6 Thank you very much.
7 **MR. YOUNG:** Thank you, Mr. Marsh.
8 Amy Hill, Andy Caldwell, Lisa Bucher, Tom
9 MacPhearson.
10 **MS. HILL:** Hello. My name is Amy Petre Hill.
11 That's P-e-t-r-e, space, H-i-l-l. Thank you.
12 I appreciate the opportunity to speak with
13 you today. I'm on the Board of Trustees of the
14 Unitarian Universalists Legislative Ministry. We even
15 have a cool shirt.
16 We are a state-wide organization of Unitarian
17 Universalists congregations, bringing our voices to
18 public issues we feel strongly about and this is one
19 that our members particularly the Central Coast have
20 told us to fight. So I've driven down here to give
21 testimony on behalf of another Board member, who is a
22 pastor in Santa Barbara, who can't be here because of a
23 pastoral issue. She needed to do what she needed to
24 do. So I'm going to go ahead and read this, and then
25 I'm going to provide it to the secretary so they have

Page 300

1 this. This is from Reverend Julie Hamilton. She's a
2 minister at Santa Barbara Church, which has a very
3 large meeting congregation.
4 To the members of the Central Coast Water
5 Board. Water has been an important issue in the lives
6 of those of us on the Central Coast. Every so often,
7 we have the opportunity to take action in such a way
8 that insures future generations will continue to have
9 access to this precious resource that we all must
10 share.
11 Right now, there are people in our
12 communities that have no clean drinking water through
13 contamination of local wells from agricultural run-off,
14 particularly nitrates. There are people spending 10
15 percent of their income on safe water. The present
16 health risks are bad enough, but the situation will
17 only get worse unless some reasonable action is taken
18 quickly.
19 Soon you'll be deciding on whether or not to
20 require the monitoring and protecting of groundwater
21 quality in our communities. Currently, those who create
22 this pollution are not required to pay the costs.
23 Farmers do not have to monitor the levels of nitrates
24 in our run-off from their fields and if a well is found
25 to be contaminated the community members, often

Page 301

A6028BD
PANEL HEARING MARCH 14, 2012

1 low-wage workers in the same fields that produce the
2 pollution are required to bear the brunt of the cost of
3 a new well --
4 **MR. YOUNG:** Ms. Hill --
5 **MS. HILL:** -- to the West --
6 **MR. YOUNG:** -- give us your conclusion --
7 **MS. HILL:** Sure.
8 **MR. YOUNG:** -- Sentence.
9 **MS. HILL:** As communities of faith, we want to be
10 able to purchase produce and not feel bad that other
11 people that are in our community are being harmed in
12 its production. Thank you.
13 **MR. YOUNG:** Thank you.
14 Andy Caldwell.
15 **MR. CALDWELL:** Chairman Young Caldwell is spelled,
16 C-a-l-d-w-e-l-l. I represent the Coalition of
17 Agriculture Business of Santa Barbara and San Luis
18 Obispo County. There are currently 1800 members who
19 probably employ about 60,000 people who represent most
20 of the farmers in their region as part of our
21 coalition.
22 I want to get back to the beginning. The
23 charges, the highest reasonable water quality, and
24 certainly, in the areas where people's health is being
25 threatened should be the priority of this Board. And

Page 302

1 it's hard for us, in the public, to understand if
2 hundreds of millions of dollars of expended grants
3 where that didn't go to those vulnerable populations in
4 terms of -- if your Staff knows what needs to be done,
5 how come they haven't been doing it for the last 10 to
6 15 years?
7 The question is to how to do this. The
8 question is how do you accomplish this. It's one thing
9 to promulgate. It's another thing to figure how to do
10 it. If it was easy, it would have been done already.
11 If it was easy, it would be being done all over the
12 State of California and you wouldn't be the first. The
13 question is what's reasonable. What's achievable and
14 how do we accomplish that. The Ag community has hired
15 an expert that's actually been doing this kind of work
16 and he was here to tell you, it's not easy, but we are
17 willing to try. But your Staff has pushed the Ag
18 community in different ways and closed the record.
19 When in reality, the community was trying to respond to
20 questions from your Board as to what we need more
21 detail and to provide the details, and just the record
22 is closed. Work with us. What is reasonable? What is
23 achievable? Focus on those areas that are the highest
24 threat first. Capture the rest later. Ask your Staff
25 how they can prove what they want is achievable. It's

Page 303

1 easier to talk.
2 Thank you.
3 **MR. YOUNG:** Thank you, Mr. Caldwell.
4 Lisa Lurie, Thomas Virsik, Marilee Hyman,
5 Richard Quandt.
6 **MS. LURIE:** Good afternoon. I'm Lisa Lurie.
7 That's L-u-r-i-e, with the Monterey Bay National Marine
8 Sanctuary. Sanctuary Staff appreciate the time and
9 energy that all parties have committed to solving the
10 challenge of improving water quality. We believe there
11 are examples in the proposed Order that allow for the
12 Regional Board and industry to work together.
13 Specifically, the Staff Proposal allows approved
14 third-party certification programs as a means for
15 demonstrating Tier 1 low-risk status. Additionally,
16 dischargers can comply with the Order by participating
17 in third-party groups approved by the Water Board. Ag
18 industry groups have proposed a similar coalition
19 approach using third-party audits to verify practice
20 implementation and effectiveness. We are pleased to
21 see flexibility in for a verification base, coalition
22 approach in the Staff Proposal as it offers a means of
23 resolving many issues.
24 We encourage the Board to provide clear
25 guidance, either within the Order, or through other

Page 304

1 means, as to the standards that such coalitions and
2 certification programs must achieve in order to be
3 approved. There are existing examples to draw from,
4 such as the SIP program, Protective Harvest Standards,
5 the Sustainability Index and Specialty Crops, and the
6 Fields to Ocean Program.
7 Both the Staff Proposal and the Ag proposed
8 coalition approach point towards a potential role for
9 third-party audit certification programs. We encourage
10 agreement to employ such programs and the Monterey Bay
11 National Marine Sanctuary stands ready to help in the
12 collaborative development of an Ag Water Quality
13 Certification Program as a tool to strengthen
14 accountability and demonstrating transparency in
15 demonstrating regulatory compliance.
16 The Staff Proposal provides an opportunity
17 for certification programs to incentivize water quality
18 improvement and Board innovation. Clear guidance to
19 define what constitutes an acceptable program will
20 provide the assurance that the Regional Board is
21 committed to a successful outcome.
22 This is critical for industry and interested
23 parties to move forward in confidence to develop a
24 meaningful certification program.
25 **MR. YOUNG:** Thank you for your comments.

Page 305

A6028BD
PANEL HEARING MARCH 14, 2012

1 Thomas Virsik, Marilee Hyman, Richard Quandt.
2 **MR. VIRSIK:** Thomas Virsik, V-i-r-s-i-k.
3 **THE REPORTER:** I can't hear you. Can you speak
4 up?
5 **MR. VIRSIK:** Thomas Virsik, V-i-r -- is this
6 better?
7 **THE REPORTER:** Yes.
8 **MR. VIRSIK:** V-i-r-s-i-k, from the Law Office of
9 Patrick Maloney.
10 Chair and members of the Board and Staff, I'm
11 going to cut to the chase. It would be wrong for you
12 to ignore the report from UC Davis issued last night.
13 I'm going to give you two independent reasons and I'm
14 going to do it two minutes.
15 The first independent reason is on Page 11 of
16 that report. We submitted a letter on this, but I
17 understand you don't have it at this point because your
18 Staff needs to make a determination whether you're
19 allowed to look at it.
20 On Page 11, Dr. Harter, the author recites
21 the purpose of SBX2, and it includes a report for you
22 guys, for this purpose being quoted in our letter your
23 Board, by name, the other, it's a gift. The
24 legislator, the governor, is giving you a gift. It's
25 giving you a whole, separate analysis to use. You get

Page 306

1 to use your Staff, and Davis, so you could lose
2 credibility or you could take it.
3 The second reason because we -- this has come
4 up, you have every legal reason to accept this and I'll
5 give you a citation, Western States Petroleum
6 Association vs. The Superior Court 9CAL 4th 559. If
7 you'll look at the last page, there is two factors,
8 only two. Timeliness and diligent. I'm timely.
9 The report came out last night. I'm
10 diligent. I'm here, so the Court is going to make you
11 take a look at this or you could do it yourself, I have
12 about five seconds. It's a wonderful. Sorry to be so
13 short, but you gave me two minutes, I'll take them.
14 Thank you.
15 **MR. YOUNG:** Marilee Hyman.
16 **MS. HYMAN:** Honorable Board. I'm Marilee Hyman,
17 H-y-m-a-n, speaking as a concerned citizen.
18 Mr. Chairman, I'm not sure how we got here, but
19 it's shameful that you brand all of our valued farmers
20 as polluters, guilty until they prove themselves
21 innocent at their own time and expense. Further, you
22 impose an unfounded mandate for information that can be
23 used against them.
24 The only data we struggle to get, but
25 previously your own Staff admitted, in writing, that

Page 307

1 they cannot analyze the data that you already have,
2 with the health department data, much less this new
3 mountain of data that you've acquired.
4 I carry three comments from Mike Rockhurst, a
5 farmer, and a rarity.
6 First, your Staff still insists on a one size
7 fits all, in that it punishes farmers in nonpolluted
8 watersheds. Growers would have been more receptive if
9 the proposed regulations concentrated on the areas with
10 problems. We growers cannot easily pass on these
11 increased costs. Food companies will just go
12 elsewhere.
13 Second, the amount of paperwork your Staff
14 generates is hard on individual farmers, like me. I
15 don't want to hear, well, it's in the last Draft. I'm
16 sorry, but I have a job producing food and it takes
17 pretty much all of my time, seven days a week and
18 there's a long chain of responsibility for what ends up
19 in the water, but farmers are easy pickings. I think
20 the vast majority of us do follow label directions and
21 minimize the use of fertilizer and pesticides.
22 In closing, I urge you to consider your
23 impact on a local farmer and Ag economy. Heavy-handed
24 costly relations created in a vacuum of theory should
25 not be the approach of the governing bodies.

Page 308

1 To be effective, your Order should be
2 realistic, obtainable, and affordable. Farmers do want
3 to help out. Figure out how to best use it
4 cooperatively. Thank you.
5 **MR. YOUNG:** Thank you for your comments.
6 Mr. Quandt and then John Tessario, Kevin
7 Merrill, Bill Thomas.
8 **MR. YOUNG:** Thank you.
9 **MR. QUANDT:** My name is Richard Quandt,
10 Q-u-a-n-d-t. I'm testifying today on behalf of the
11 Growers Shippers Association, Santa Barbara to San Luis
12 Obispo Counties. ;.
13 Our organization represents Strawberry and
14 vegetables growers, some will be in Tier 1, others will
15 be in Tier 2, and others will be in Tier 3, the
16 underpinnings of your entire Order is basically the
17 criteria that's been established to established the
18 Tiers whether or not the requirements are substantive
19 requirements, proportional to the threat of water
20 quality.
21 And I'm here to submit that I don't think
22 that process has taken place. I think the Tiers are no
23 more than a fortunate tool to direct enforcement
24 against larger growers and don't necessarily reflect
25 the threat to water quality.

Page 309

A6028BD
PANEL HEARING MARCH 14, 2012

1 Earlier today the highest priority, in terms
2 of addressing water quality, was nitrates in the
3 groundwater, is what I heard. To achieve that goal,
4 Farmers will need to develop Irrigation Nutrient
5 Management Plans under the Staff Proposal, based on the
6 estimates, I heard today, there would be a total of 61
7 farms in the region that would require to develop
8 Irrigation Nutrient Management Programs.

9 The good news is under the Los Huertos Ag
10 Alternative 70 percent enrollment of Tiers 2 and 3
11 would have 1,300 farms working to develop irrigation
12 Nutrient Management Programs, effect actually 176,000
13 irrigated acres in this region.

14 **MR. YOUNG:** Thank you for your comments.
15 Joy Fitzhugh.

16 **MS. FITZHUGH:** Good morning. Joy, F-i-t-z as in,
17 zebra, h-u-g-h.

18 And I am a very small orchardist, but more
19 importantly, I am the legislative analyst for the San
20 Luis Obispo Farm Bureau, and I really liked following
21 Mr. Quandt, because he pretty much said what I want to
22 say.

23 It is the base on -- we need to deal with the
24 base on threat to water quality, not size. And
25 obviously, my buddy, Chris Borchard, is not in sight,

Page 310

1 but I also feel that I want to let you know that our Ag
2 members, well over a thousand in our County, are
3 supporting the Ag Alternative with the Los Huertos, and
4 we feel very sure this system.

5 We need the cooperative system and this
6 system is the one that will be able to help get our
7 water quality back to where it should be.

8 Thank you.

9 **MR. YOUNG:** Thank you for your comments.
10 Is Mr. Merrill still here? Kevin Merrill?
11 Bill Thomas, and then Lisa Bodrogi? She's here?
12 Go ahead.

13 **MR. THOMAS:** Bill Thomas, T-h-o-m-a-s.
14 Mr. Chair and members. I represent
15 Ocean Mist Farms and R & C Farms, two of the largest
16 vegetable operations in the Lower Salinas Valley,
17 Casterville areas.

18 We've been frustrated for some time that --
19 we have been squandering this time period this Order --
20 this Order has been before us. We've had meetings
21 with Mr. Briggs and Staff. Those meetings had showed
22 that there was real opportunity to find some middle
23 ground.

24 More recently, the Marc's study, even some
25 things that Steve Shimek has advised in Sacramento.

Page 311

1 There's lots of promising things out there, and I think
2 we all share responsibility to work now, in front of
3 the Board, where you have a very tough decision. I was
4 going to say today, but I guess tomorrow, and to adopt
5 this severe Staff Proposal, which will just kick this
6 to the State Board, or find a way to find some last
7 minute opportunity here.

8 The problems in the Staff Report, with
9 Tiering -- we know what Tiers we're in. We're large
10 vegetable growers. There is no way to get out of the
11 Tier 3. The monitoring the field water, right when it
12 leaves the field, within the prescribed period of time
13 of the use of your insecticides is just a way to target
14 the insecticide.

15 The tile drains, which were supposed to come
16 out of this Order at one time, keep getting back in
17 it. That's a major problem. The nutrient limit, the
18 encircled nutrient management plans are appropriate.
19 You should know the amount of nitrate in the water, in
20 the soil and make the determination of your need.
21 That's appropriate. That's asking for proper
22 management, but this goes beyond that and puts a limit
23 on the amount of nitrogen you could use. That's making
24 a management decision. That's beyond your capability.
25 The Ag Alternative can easily be merged in here.

Page 312

1 Thank you.

2 **MR. YOUNG:** Thank you.
3 Yes, Dr. Hunter.

4 **MS. HUNTER:** Question to Staff. That's second
5 time today we've heard the reference to tile drains
6 being included, and I saw in the Staff Report that it,
7 that these issues or tile drains, specifically, have
8 been removed.

9 Can you clear that up for me, please?

10 **MS. SCHROETER:** You could see it's late in the
11 day. I've got to get my head wrapped around this.
12 So tile drains. There's a couple of things
13 to be clarified. One in the misconception session of
14 the Staff Report as well was in the Order.

15 So first, let me go to the Staff report.
16 We've received many, many comments that stated that the
17 Draft Order, um, states that growers can no longer use
18 tile drains. That is incorrect, inaccurate, there's no
19 place in the Order where it says you can no longer use
20 tile drain.

21 What the Order does, specifically, say about
22 tile drains, um, one, it states the intent that the
23 need to make improvements in tile drains, in the
24 future, we're not prioritizing, addressing impairments
25 caused by tile drains immediately.

Page 313

A6028BD
PANEL HEARING MARCH 14, 2012

1 What it does also say is that we have to
2 start better understanding, um, how tile drains
3 contribute to our water quality impairment, so there
4 are two places where we put requirements related tile
5 drains.
6 One stated the sampling analysis design had
7 to be such that we can evaluate the contribution of
8 water quality impairment on tile drains, and, two, if a
9 tile drain exists at discharge on a particular
10 property, that would be included as part of the
11 individual discharge monitoring for a tear Discharger.
12 But there is no stated requirement that you
13 could not. That would effect the use of the tile
14 drain.
15 **DR. HUNTER:** Thank you.
16 **MR. YOUNG:** Okay.
17 **MR. DELGADO:** Can I ask a follow-up to that?
18 **MR. YOUNG:** Sure.
19 **MR. DELGADO:** Very briefly. To me, in simple
20 English, what you just said was tile drains are allowed
21 just like they always have been and like any other
22 discharging mechanism, they need to be monitored.
23 Is that approximately what you said?
24 **MS. SCHROETER:** That's correct.
25 **MR. DELGADO:** Okay. Thank you.

Page 314

1 **MR. YOUNG:** Lisa Bodrogi.
2 **MS. BODROGI:** Thank you, Chairman Young.
3 Lisa Bodrogi. I'm the Government Affairs
4 Coordinator for the Paso Robles Wine Country Alliance.
5 We represent 500 members, comprised of
6 wineries and growers, hospitality partners and related
7 businesses. We are all stakeholders and drink water
8 and eat food and we do consider wine as food. The wine
9 industry here in San Luis Obispo contributes \$1.8
10 billion locally and pays more than 86 million in local
11 and state taxes.
12 The wine grapes are the highest economic
13 contributor agricultural crop in San Luis Obispo
14 County. And for this reason, our organization has made
15 a concerted effort to work our local government,
16 neighbors and communities to expand education awareness
17 and collaboration on matters that affect our industry.
18 While we appreciate the recognition of the SIP
19 Certification Program developed by the Central Coast
20 Vineyard Team.
21 We remind the Board that there are programs
22 including California Association of Wine Grape Growers
23 of Sustainable Wine Grape Practices UC Extension,
24 University Research and Development Programs and
25 Resource Conservation Districts who all play a vital

Page 315

1 role in Water Quality Management.
2 We do support the Ag Alternative and question
3 why this third-party audits concept is not as better
4 received because it is basically a grower-based
5 approach, which as are these other certification
6 programs.
7 I see my light is on, so I will conclude with
8 my last sentence which is, if you eat food or drink
9 water, you have an interest in creating common ground
10 and public private partnerships, based on sound,
11 science and to obtain long-term results.
12 **MR. YOUNG:** Thank you.
13 Randy Share, Gail Pratt, Richard Sadowski
14 Jeanette Watson.
15 **MR. SHARE:** Randy Share, Share Brothers Farms,
16 Santa Maria.
17 I'm also the stipulating landowner
18 representative on the Kutchell Management Agency.
19 Santa Maria is the adjudicated basin.
20 We do monitoring of groundwater, which we put
21 in our annual report, which in a few -- six weeks,
22 we'll be having public hearing on our health, quality
23 and quantity sector base, so we do already monitor
24 groundwater and make it public in Santa Maria.
25 Thank you.

Page 316

1 **MR. YOUNG:** Thank you for your comments.
2 Gail Pratt, Richard Sadowski, Jeannette
3 Watson, Bob Campbell.
4 **MR. SADOWSKI:** Richard Sadowski. That's
5 S-a-d-o-w-s-k-i.
6 I'm a concerned citizen in Morro Bay,
7 certified waste water production operator. I'm a first
8 responder of sewage spillage emergencies.
9 One of the things that I think that should be
10 considered is that we have urban areas near outlying Ag
11 labs. Um, taking very careful look at the waste water
12 collection systems, um, as a nitrate source.
13 For instance, in our Morrow Bay Basin
14 Aquafur, a predetermined conclusion by local city staff
15 was, kind of, blaming farmers about a mile away while
16 we have huge sewage collection nights, totalling 15- to
17 20 inch collection nights, leaking sewage right into
18 the Morrow Bay Basin Aquifer.
19 I did a report that I submitted to your Staff
20 years ago and follow-up data has shown that our
21 conclusions are more likely that it's from sewage than
22 it is from Ag lands.
23 So, and regarding staffing, I think, that the
24 Regional Board should really consider Staffing and
25 having sectors closely -- have protocol on how they're

Page 317

A6028BD
PANEL HEARING MARCH 14, 2012

1 going to be doing their water samples. There are some
2 issues on regarding how samples are taken.
3 Thank you.
4 **MR. YOUNG:** Thank you for your comments.
5 Jeanette Watson. Bob Campbell. This close
6 enough?
7 **MR. CAMPBELL:** Good afternoon. My name is
8 Bob Campbell and I am a third generation grower in the
9 Central Coast here, small family operation.
10 And I raised my kids and now our grandkids go
11 on the ranch and drink tap water out of the well, so, I
12 too, am interested in clean groundwater, so that's not
13 the issue. I think it's how we approach it and how we
14 get there, that's the problem.
15 And I think if I were a Board member today,
16 after hearing some of speakers talk about the
17 cooperative efforts that are taking place around the
18 state with agriculturists and government agencies, some
19 of the environmental groups, I guess I'd be asking why
20 aren't the farmers and the growers wanting to work with
21 our Staff. And the answer is your Staff, it's about
22 mistrust.
23 I heard them, just today, and I have attended
24 all these hearings a of years and I go home, without
25 fail, totally frustrated. I heard them sit here today

Page 318

1 and whine, by the way, diplomacy is not one my strong
2 suits, but I heard them whine about the three or four
3 years it's taken to get here.
4 Well, I would hope something this big and
5 this complex would take whatever time it takes, so we
6 get it the right the first time. And I, quite frankly,
7 am not happy with their attitude about this.
8 Our coalition representatives got here today
9 to try and clarify why our proposal will work and they
10 sat there and tried to throw roadblocks and not allow
11 them to present that and they talked about individual
12 well monitoring. And they have to give a general
13 location to the public where that well might be, but
14 the owner knows the exact location of that will not be
15 made public.
16 No reasonable person buys that argument or
17 that statement. That information will become public
18 and individual growers will be faced with certain
19 groups targeting them because of some issues that they
20 may or may not have.
21 I've got so many notes here, I'm not sure
22 where it stops. Sustainable agriculture, your Staff
23 talks about what a great program that is and I want to
24 say that that's not government. That came from
25 Agriculture. That's great. When agriculture presents

Page 319

1 a proposal to you about helping and taking a leadership
2 role in Water Quality Improvement.
3 Please consider what we've proposed to you
4 because it can work, it's worked in other places and it
5 can work here.
6 **MR. YOUNG:** Thank you, Mr. Campbell.
7 Maryann Pickman, Sara Dayman, Abigail Solis,
8 Dana Perlas, Rose Frances, Marcela Morales.
9 **MR. YOUNG:** First name. Go ahead.
10 **MS. PERLAS:** My name is Dana Perlas, P-e-r-l-a-s.
11 I'm Community Organizer and Policy Advocate
12 for the Nonprofit Organization Pesticide Watch
13 Education Fund.
14 I've specifically worked on the Central Coast
15 and worked with over 200 community organizations and
16 community members who are concerned about the
17 contamination of pesticides in their air and
18 groundwater.
19 All of these people I've been working with,
20 specifically on issues of Methyl Iodine, which your
21 Board has been very supportive, and wrote a letter
22 encouraging against the registration of Methyl Iodine,
23 specifically citing the fact that you're already
24 concerned enough about the contamination of groundwater
25 and surface water in the Central Coast.

Page 320

1 I want you to think about the issues that
2 have been raised today with a lens of public health.
3 Think about not just the costs to agriculture, but of
4 the lives of the thousands of people in the Central
5 Coast.
6 Think about the costs, the impacts that it
7 will have on the health clinics and schools, should
8 people drinking their groundwater drinking the surface
9 water, playing in the water, being impacted by the
10 pesticides, by the nitrates which affects their body
11 neurologically, cancer, thyroid disease, the list goes
12 on and on you're well aware of risks that happen when
13 contaminated with pesticides.
14 I want to encourage the Board to take a vote
15 on this waiver and not wait any longer. It's been way
16 too long, and the longer you wait, the longer these
17 impacts will have on community members.
18 The Staff has done a very good job at the
19 report so far. It's flexible, and I think that this
20 report can take into consideration the importance of
21 monitoring and evaluation of groundwater and of surface
22 water.
23 Don't weaken the Pesticide regulations. We
24 want monitoring. We want regulation, enforcement, and
25 furthermore we want transparency. We want this

Page 321

A6028BD
PANEL HEARING MARCH 14, 2012

1 information to be publicly accessible.
2 Thank you.
3 **MR. YOUNG:** Thank you for your comments.
4 Rose Francis, Marcela Morales.
5 **MS. DAMRON:** Sara Damron, D-a-m-r-o-n, for the
6 Surfrider Foundation.
7 Good evening, Chair, Board members. We have
8 five chapters here in the region, and one chapter could
9 be here today, so I'll speak for the other four that
10 can't be here.
11 We wish to comment on the Order because the
12 treatment of coastal water quality is a key issue upon
13 which our organization was founded. And, of course,
14 some of the most toxic water bodies in this region, the
15 Salinas River and the Santa Maria River, actually empty
16 out to the ocean forming sand bars, and obviously there
17 are many other beneficial uses of the watershed, as
18 well.
19 What we wanted to point out is this Board is
20 tasked protecting the waters of our region to support
21 all beneficial uses, and you are also tasked with
22 regulating dischargers whose Discharge could impact
23 those beneficial uses and water quality objectives.
24 We are going to keep these duties in front
25 you, in front of your mind, and to overcome the

Page 322

1 pressures that may obscure or focus elsewhere.
2 Your Staff has provided ample evidence
3 documenting water quality issues faced in the Central
4 Coast, and irrigated agriculture's contribution to
5 these impairments.
6 It's up to you to choose to implement a
7 program designed to address impairments and the most
8 likely contributors to the impairments, which would be
9 high risk farms or to continue to be dissuaded from
10 taking action all together and perpetuate the
11 continuing pollution of our waters.
12 While we continue to support individual
13 monitoring of the farms and ranches because we believe
14 that is the most effective way to pinpoint pollution,
15 we appreciate that the latest Draft does require
16 individual monitoring of the high risk dischargers.
17 That said, we do support the Waiver, the
18 proposed Waiver right now, we urge you to adopt that
19 tomorrow, so we can get back on track and begin working
20 toward the next five years.
21 Thank you.
22 **MR. YOUNG:** Thank you for your comments.
23 Rose Francis, and then Marcela Morales,
24 Karen Araujo. Reverend Lindsey Rampton.
25 **MS. FRANCIS:** Good afternoon. Rose Francis,

Page 323

1 F-r-a-n-c-i-s.
2 I'm an attorney with Community Water Plan, a
3 nonprofit organization based in Tulare County, and I'm
4 here today to represent not the community, but
5 currently drinking water in, in the Central Coast is at
6 risk for future contamination of their drinking water
7 provides a number of parallels between Tulare's
8 agricultural and that of the Central Coast.
9 I'm an attorney for a number of small public
10 water utilities in the San Joaquin Valley. And these
11 water providers serve Salinas and the San Joaquin
12 valleys. They are run by an all volunteer Water
13 Board.
14 The Board members are residents of the
15 community the public water system serves, and all of
16 the small public water systems, both in the San Joaquin
17 and here on the Central Coast are held to strict
18 regulatory standards to protect public health including
19 the submission of data and numerous reports on an
20 annual basis. They are required to attend and maintain
21 a minimum of technical and managerial capacity in order
22 to operate safely and effectively and the vast majority
23 have met these requirements.
24 I appreciate the burden that a regulatory
25 program places on growers and in particular in the Tier

Page 324

1 2 and Tier 3 region, specifically on small growers,
2 however, I believe it's disrespectful to suggest that
3 they're not capable ever meeting basic reporting
4 requirements to protect public health.
5 **MR. YOUNG:** Thank you for your comments.
6 Marcela Morales.
7 **MS. MORALES:** Thank you, Chair, and members of the
8 Board.
9 I'm Marcela Morales, M-o-r-a-l-e-s, of the
10 Central Coast Alliance for United Work & Sustainable
11 Economy. And I'm referencing the definition for
12 Environmental Justice provided to the Board in May of
13 2010. And, in brief, the environmental justice is
14 equal and public access to help the environment,
15 including the elimination of burdens for communities
16 with color and low income communities. Positive
17 history of working with diverse coalitions including
18 the business community.
19 We are partnering with UCI in the City of
20 Channel Islands on a business forum and commercial
21 business problem forum integrating social and
22 environmental responsibility, so we are partnering with
23 the agricultural community in Ventura County and the
24 business community as a whole.
25 And our concern and our support is for the

Page 325

A6028BD
PANEL HEARING MARCH 14, 2012

1 Staff's recommendations, because of the environmental
2 justice urgency. And I want to echo Mr. Marsh's quote
3 earlier about the frustration about what seems to be a
4 lack of sense of urgency, for us, this is an issue for
5 racial justice. We have communities which is almost
6 100 percent Latino communities.

7 This is not just an environmental issue, it's
8 a racial justice issue. It's difficult to come here
9 year after year, at this point for me, only two years,
10 and see quite frankly a sea of white, knowing that the
11 communities that are bearing the disproportionate
12 burden are almost 75 percent to 100 percent people of
13 color.

14 And so I want to raise the issue of racial
15 justice and say that enough delay. Justice delayed is
16 justice denied. It's time to make a decision, and move
17 forward. We all agree this is no where near any
18 perfect solution, but we must move on to take the next
19 step and start day one, after it's approved, working on
20 the next better step.

21 Thank you.

22 **MR. YOUNG:** Thank you.

23 **THE REPORTER:** I need to change my paper, please.
24 (Brief interruption.)

25 **MS. SOLIS:** Gabrielle Solis. I was called

Page 326

1 earlier.

2 **MR. YOUNG:** All right.

3 Ms. Solis.

4 **MS. SOLIS:** Gabrielle Solis. I was called
5 earlier.

6 **MR. YOUNG:** All right.

7 **MS. SOLIS:** My name is Gabrielle Solis. I am the
8 community organizer for the Community Water Center of
9 the Central Valley, and as the organizer there, I can
10 stand here and tell you about the many families we are
11 with on a daily basis that are impacted by water.

12 But we have heard that today. I do want to
13 mention that our work at the center has shifted from
14 just the families, to working a lot of school districts
15 that have this problem.

16 School districts that are now faced with
17 dealing with the fact of how are we going to pay to
18 supply clean drinking water to our hundreds and even
19 thousands of students. And I'm sure you know this --
20 perhaps you don't -- but California has the most number
21 of schools without safe water in the nation.
22 California.

23 And it just astounds me to stand here and say
24 this to you in 2012. Almost a shameful thing to say.
25 And I think we are all kind of under the misconception

Page 327

1 that this water issue is for the low income. ;.

2 I just want to say, on a personal note, my
3 daughter goes to a school that is -- has water that is
4 highly contaminated with arsenic. My daughter.

5 So this means every day when she goes to
6 school, she must take an alternative source of water
7 with her. If she forgets her bottle of water, which
8 kids do, this means two things, one, do I -- am I
9 thirsty all day, or, two, um, do I drink this poison
10 water.

11 Now no child should have to ask themselves
12 this question. So I ask you this. What would you
13 choose? What would you do?

14 And, lastly, I want to say to a comment that
15 was made earlier, how we've been whining all morning
16 about spending three or four years talking about this
17 decision. How it's been too long, and how he hopes
18 that we would take at least this long, while we wait
19 and while he thinks we whine our kids, our students, in
20 our California schools are getting sick.

21 Thank you.

22 **MR. YOUNG:** Thank you for your comments.

23 Now we have Karen Araujo?

24 **MS. ARAUJO:** Araujo.

25 **MR. YOUNG:** Araujo?

Page 328

1 **MS. ARAUJO:** A-r-a-u-j-o.

2 I'm with the Unitarian Universalist Legislate
3 Ministry. I'm a volunteer here, on my own time, and my
4 own dime today because this is what my faith in action
5 looks like.

6 Thank you all for taking on this huge task,
7 those of you who are paid Staff and those of you who
8 are volunteers, members of this Board.

9 Mr. Wolff quoted earlier something about
10 change, the difficulty of change. As Unitarian
11 Charles Darwin said, it wasn't survival of the fittest
12 that made a difference. It was the adaptability. How
13 much, how much we can change? That's what makes a
14 difference.

15 This is a key moment for us here. We must be
16 able to change. It's on you. You have a tough row to
17 hoe, because people before did not make the toughest
18 decisions they could, because of whatever pressure they
19 endured or faced.

20 Five million dollars in my neighborhood to
21 provide safe water for the San Jerardo folks. This is
22 only one group. If these statistics that quoted
23 earlier, pan out, through out our area, about 60,000
24 people are at risk of drinking from contaminated
25 wells. It's up to you.

Page 329

A6028BD
PANEL HEARING MARCH 14, 2012

1 It's your responsibility, as you know, to
2 protect the water quality. Please pass this. Vote on
3 it tomorrow. We are always going to have more
4 information, and if we're doing things correctly, we
5 will have processes in place as of this year, in this
6 great proposal by the Staff, the mechanisms to address
7 needed modifications and change, but it's in the doing
8 that we're really going to learn what they did in
9 practice, in the implementation there will be
10 innovation. We're going to be okay. We're going to be
11 okay.

12 Was that my time?

13 **MR. YOUNG:** It was.

14 **MS. ARAUJO:** Please vote tomorrow, thank you.

15 **MR. YOUNG:** Thank you for your comment.

16 Reverend Lindsay Rampston and then Brad
17 Snook, Carl Wiley.

18 **MS. RAMPSTON:** Chairman, members of the Board, I
19 am Reverend Lindsay Rampston.

20 I'm the Senior Minister at Unitarian
21 Universalist Legislative Ministry which coordinates
22 collaborative ministries and congregation in
23 California.

24 Last March we hosted the United Nations
25 Independent Expert on the Human Right for Water

Page 330

1 Sanitation here in California.

2 She was here to listen to communities and
3 receive testimony, but she was also here to look at
4 good practices that she could take back into the larger
5 framework internationally, as all of us together are
6 trying to figure out how to actually implement and
7 realize the human right for water, for safe, affordable
8 accessible water for daily human needs.

9 The problem with nitrates and unregulated
10 groundwater is indeed profound. But just as California
11 established new omissions standards for cars, which has
12 generated innovations for jobs as well as cleaner air.
13 I think California can take the leadership role in
14 establishing a regulatory foundation, as well as to
15 collaborative strategies to address this serious threat
16 to our shared existence.

17 I was concerned by Congressman Farr's
18 testimony that San Jerardo might be the example of a
19 success story. San Jerardo is unique. It is a
20 cooperative, it has central meeting place, a talented
21 manager, allies in government, a new profit center, but
22 five million dollars later and taxpayer funds and \$120
23 a month is not something that's sustainable.

24 The story that a baby's coming down the river
25 and the community trying to save them until they

Page 331

1 finally realized they need to go upstream and deal with
2 the root causes, is appropriate here.

3 We can't deal with this community by
4 community by community. We ask that you go forward
5 with an Ag Order that sets a regulatory foundation that
6 is usable, that brings in widespread data, that still
7 allows for continued, creative, collaborative effort
8 and new information.

9 Continuing to postpone a vote not only
10 threatens community help, but it displaces economic
11 responsibility burdening the most vulnerable and it
12 undermines trust.

13 Thank you for your service. Thank you for
14 the service of those in your Staff who are dedicated to
15 your mission, and thank you to all of the farmers who
16 are working so hard to figure out how to grow this
17 without damaging the gift of creation that blesses all
18 of our lives.

19 **MR. YOUNG:** Thank you for your comments.
20 Brad Snook, Joel Wiley.

21 **MR. SNOOK:** My name is Brad Snook, S-n-o-o-k.
22 I'm the Chair of San Luis Obispo Chapter of
23 Surfrider Foundation. Welcome to our County. I do
24 want to state a little observation on the Farm Bureau,
25 the CFBF presentation earlier.

Page 332

1 I'm a little bit concerned that perhaps that
2 information could have been brought in front of the
3 Board earlier. That questioning whether this was the
4 time or place to bring out all that information.

5 The Surfrider values environmentally
6 responsible agriculture, but who are the responsible
7 ones? No one argues the existence of a problem. It's
8 obvious that adoption of this Agricultural Order will
9 help address water quality problems in our County.

10 The Water Board has created a workable
11 solution and to a delay to implementation by just
12 simply ignoring the problems of mismanagement that got
13 us here. To delay implementation will continue to put
14 mental health at risk and it, potentially, could invite
15 new risk.

16 Please vote to authorize the Ag Order today
17 or tomorrow. Thank you.

18 **MR. YOUNG:** Thank you for your comments.
19 Joel Wiley.

20 **MR. WILEY:** Good evening. My name is Joel Wiley.
21 That's W-i-l-e-y. I'm a CCA and been practicing crop
22 nutrition for 33 years, and I see the proposal that's
23 in front of you, that you're asking to propose to and
24 vote on.

25 It's incredibly overwhelming. I've been

Page 333

A6028BD
PANEL HEARING MARCH 14, 2012

1 doing this for 33 years and it's like, Wow! It's a
2 pretty big project. There's going to be a lot of
3 information that's brought up in front of you that this
4 Staff is going to have to address.

5 I don't know how you're going to do it. The
6 hydrologist -- the hydrology requirement as CCA having
7 that certification, I don't know if there is very many
8 of those available in the State of California that have
9 that certification. I think you should look into
10 that. That's something that's really an overwhelming
11 certification that you're asking people to have, if you
12 want to include CCA certification in this process.

13 I am trying to figure out the Tier process,
14 because I can identify one acre parcel that has as much
15 influence on groundwater than a 500-acre parcel would
16 have, a greenhouse. There's a lot of down pressure
17 from water, with very little evaporation, and it just
18 keeps pushing nitrogen down. Okay?

19 So I think the Tier process comes with and
20 it's, kind of, complicated, and I could see why people
21 would have a hard time figuring it out.

22 The last thing I want to say is that if you
23 vote on, what I would call, the Alternative Ag
24 Proposal, the Marc Los Huertos Proposal, there's
25 collaboration that I heard overwhelmingly pushed by our

Page 334

1 legislators, and then there's this question about
2 creativity. And I don't want to see creativity stuck,
3 and I think with the allowing of an alternative
4 approach to what we're here voting on, potentially
5 tomorrow, I think it's really important we look at the
6 alternative.

7 Thank you.

8 **MR. YOUNG:** Thank you for your comments,
9 Mr. Wiley.

10 Mr. Tomlinson (inaudible names).

11 **MR. TOMLINSON:** Rick Tomlinson. I am from the
12 California Strawberry Commission. We support clean
13 water. I have to rush through and correct the record
14 on a few things.

15 First, we agree with Staff that most
16 strawberry farms will fall into Tier 2. Our main
17 concern with the Tiers is that no matter what a
18 strawberry grower does to improve water quality, most
19 will always be stuck in Tier 2.

20 In short, there is no carrot, there is no
21 reward for doing well. A grower gets stuck and they
22 stay in a Tier. We agree with Staff that a fertilizer
23 cap of a 120 percent is an achievable BMP for most
24 strawberry farms. Not all, but most.

25 However, we're concerned with the assumption

Page 335

1 to regulate use is an effective control of discharge.
2 As we indicated in a previous hearing, research jointly
3 funded by the Regional Board and the Strawberry
4 Commission demonstrates, on average, most strawberry
5 farmers already have adopted this BMP of 120 percent
6 and combined with strip irrigation are not high risk
7 for leaching.

8 In previous comments, we requested that
9 strawberries be moved to a lower designation. Staff
10 showed a slide that indicated that 20 to 40 percent of
11 wells are affected by nitrates.

12 Some of the previous reports and USDS reports
13 that Staff has referenced indicate that the correct
14 number at face value is 9 percent.

15 Last year we presented data on the
16 groundwater analysis. The data shows that about
17 50 percent of small disadvantaged communities, those
18 that are on systems that serve between 2 and 14 homes
19 are in areas where no commercial agriculture. Half of
20 the affected wells are in areas with no farms.

21 Staff described the Central Coast Vineyard
22 Team SIP program that you could move from Tier 3 down
23 to Tier 1 if you're a member of SIP, but then they also
24 talked about the Farmers Water Quality Program, that
25 our reports aren't publicly available. They're not

Page 336

1 publicly available with SIP, either. The criteria is
2 not available, the audits aren't available. More
3 importantly, the Staff Report doesn't even require them
4 to be available.

5 That's the type of different standard that is
6 being proposed for farmers for Water Quality versus
7 everything else.

8 So I'll just conclude, because I have to say
9 this, I agree with Staff that vineyards are low risk,
10 and that the SIP program is a good program. I'm just
11 using it as an example to state differences in
12 standards.

13 Lastly, I'll tell you that Ventura has a
14 coalition, and it's working great.

15 **MR. YOUNG:** Thank you for your comments.

16 **MR. JEFFRIES:** Can I ask a question?

17 **MR. YOUNG:** Go ahead.

18 **MR. JEFFRIES:** Mr. Tomlinson, do you know, off the
19 top of your head, in this region, how many acres of
20 strawberries are under irrigation?

21 **MR. TOMLINSON:** 100 percent.

22 **MR. JEFFRIES:** 100 percent?

23 **MR. TOMLINSON:** All strawberries, we only occupy
24 about 6 percent of the plant area, and they're all
25 using drip, and the report that was finally sponsored

Page 337

A6028BD
PANEL HEARING MARCH 14, 2012

1 showed that at the very beginning of the season you
2 have to move the salt away from the root zone to allow
3 that first 12 inches, and after the plant gets
4 established, you fertilize, and that's how we're able
5 to achieve that 120 percent, because no plant can
6 absorb 100 percent. There's inefficiencies, then
7 there's laws of nature.

8 **MR. JEFFRIES:** I'm trying to think of what
9 question I had for you. Oh, crop rotation.

10 How many years does the strawberry farmer
11 keep the present farm or present piece of land on
12 strawberries.

13 **MR. TOMLINSON:** Strawberries are constantly
14 rotating. It's a 14-month crop. So you can't grow
15 back to back, so you're -- I mean, you could, but
16 you're going to cut your season short. A few might who
17 own their land, but most strawberry folks lease.
18 They're in a constant rotation with vegetables. Part
19 of the grievance of the Tier system is one year that
20 farm might be a Tier 2 and the next year it might be a
21 Tier 3 vegetable farm, and then next year might be a
22 Tier 1 farm. That's going to change annually as the
23 crop changes.

24 **MR. YOUNG:** Is that the same owner; the same farm
25 operator.

Page 338

1 **MR. TOMLINSON:** Not landowner.
2 **MR. YOUNG:** No, I mean the farmer.
3 **MR. TOMLINSON:** No, all different farmers. The
4 land is being leased, so you're constantly moving
5 farmers and crop.

6 **MR. YOUNG:** You answered my next question.
7 **MR. JEFFRIES:** Since you had a 14-month rotation,
8 consequently the nitrate contamination wouldn't
9 necessarily be from your crop or the crop before, it
10 could have been several crops back?

11 **MR. TOMLINSON:** This is the challenge. That's why
12 we came up with the proposal that Dr. Los Huertos
13 elaborated on, trying to figure out a legitimate way to
14 clean up water and deal with our whole system
15 approach.

16 And that's why you hear so many people talk
17 about how the Tiering system is not going to achieve
18 it. It looks okay on paper, like I said a strawberry
19 farmer is going to be Tier 2.

20 It's doable we can do it, but I don't know
21 that you're going to get the results that you're look
22 for, and we don't want to be standing up here five
23 years from now with the target on us.

24 **MR. JEFFRIES:** And you're Tier 1 or Tier 2? If
25 you're under drip you have no runoff, very little

Page 339

1 percolation.

2 **MR. TOMLINSON:** Yeah. The average strawberry farm
3 is 73 acres, it's small, but we're designated high
4 potential to leach even though we have the study that
5 says that's not accurate.

6 Everything I've told you about the
7 groundwater, the wells that are effected, and where
8 they're at and the studies, all the most current
9 reports are all consistent with everything I've said.
10 There is nothing that you will read about later and
11 find that so there is new information that changed.

12 **MR. JEFFRIES:** Do strawberry farmers use diazinon?
13 **MR. TOMLINSON:** A small percentage, maybe about
14 two or three percent of the acreage will use it because
15 some farms will plant and leave the plants in for two
16 years. And if that pest pressure builds up, that's
17 when they use it.

18 So I think that's why I said Staff actually
19 characterized about five farms in Tier 3. I think, you
20 know, if they use chlorophyll-a phosphor diazinon, it's
21 going to put them in Tier 3.

22 **MR. JEFFRIES:** Thank you.
23 **MR. YOUNG:** Thank you.
24 **MR. BRIGGS:** You just said, you know, no plan can
25 be 100 percent efficient and somebody else represented

Page 340

1 earlier, as to our Staff Proposal is requiring that,
2 you're not implying that you think the proposed Order
3 requires 100 percent efficiency, are you?

4 **MR. TOMLINSON:** Not for strawberries, but I read
5 certain crops that it required that.

6 **MR. BRIGGS:** You think the Board requires 100
7 percent?

8 **MR. TOMLINSON:** It says it. It says there's a cap
9 for farms in Tier 3, on certain vegetables that the
10 most you could apply is 100 percent; right. So if they
11 plant as far as 100 pounds the most they could apply is
12 100 pounds.

13 **MR. BRIGGS:** Are you referring to the 1.0 balance
14 issue?

15 **MR. TOMLINSON:** Yes.
16 **MR. BRIGGS:** As I recall, you reported to the
17 workshop last year, you achieved .78 for strawberries.
18 **MR. TOMLINSON:** Right. That's right. So we
19 achieved .78, so that's where for strawberries, 120
20 percent is the number you need; right. If we are only
21 80 percent efficient or 78 percent efficient, you have
22 to apply more than what you need. So that's where the
23 Staff correctly identified, and I think that it comes
24 from the report, 120 percent is an appropriate number
25 for strawberries. I think there are other numbers for

Page 341

A6028BD
PANEL HEARING MARCH 14, 2012

1 other crops, but I don't know that they have the
2 benefit of the type of studies that we generally
3 funded.
4 **MR. BRIGGS:** Okay. I just want to clarify the
5 order does not required 100 percent removal of nitrogen
6 above plant, and we can explain that again, if
7 necessary.
8 **MR. TOMLINSON:** It does say that right here. It
9 would be helpful to explain. Like I said, for
10 strawberries, I'm under the impression it's 120
11 percent, and it works for us, but I think I've read it
12 to read, for other crops, it does require a cap. I
13 don't know if that's helpful.
14 **MR. YOUNG:** Can your Staff here clarify that?
15 **MR. BRIGGS:** Maybe that's something we should do,
16 just partner around.
17 **MR. YOUNG:** Probably so.
18 **MR. DELGADO:** I think it's something we should do
19 right now because they may not be here tomorrow.
20 **MR. YOUNG:** Can you do it now?
21 **MS. SCHROETER:** I could do it now and we have
22 Monica Barricarte here who can also --
23 **MR. YOUNG:** Speak up, speak up.
24 **MS. SCHROETER:** -- Try to assist with some more
25 specific information. But, um, we do have some slides,

Page 342

1 but I'm trying to refrain from using them right now.
2 So the nitrate balance ratio, Monica, correct
3 me if I'm wrong, is the total nitrate applied to a crop
4 over the crop need so on our bottom denominator --
5 should I put the slide in?
6 **MR. YOUNG:** Well, let me ask this.
7 Does the Order limit how much nitrogen a
8 farmer can apply to his crop?
9 **MS. SCHROETER:** No.
10 **MR. TOMLINSON:** Yes, it absolutely does.
11 **MR. YOUNG:** Hang on, hang on.
12 **MS. SCHROETER:** It doesn't specify that crops
13 cannot apply more than so many pounds per acre if
14 that's your question.
15 **MR. YOUNG:** Is there a limit to how much nitrogen
16 a farmer can apply to his or her crop.
17 **MS. SCHROETER:** I agree, but it's open to
18 interpretation, okay. But, I mean, we see it
19 differently is what I'm trying to say. Let me just
20 show -- let me bring this up and we can talk about it.
21 **MR. JEFFRIES:** May I make a comment, Mr. Chair?
22 **MR. YOUNG:** Yes.
23 **MR. JEFFRIES:** I made this comment at a previous
24 hearing, but this is some of the issues that, I think,
25 we faced in the past is interpretation because we have

Page 343

1 the Staff saying one thing and you have other people
2 saying the other thing, and I have said that instead of
3 writing these Orders in technical writing, they should
4 be written in layman's language, so that the individual
5 farmer or whoever they're dealing with could understand
6 this. And it's obvious there is mass confusion over
7 this one item. It's a very large item, I'm not going
8 to say it's a small item, but it's a very important
9 item for everybody, but now that she has it up, I think
10 it's important that the language be very clear so that
11 everybody understands it as they can.
12 **MS. SCHROETER:** So let me start by saying that
13 this requirement is Staff is including this requirement
14 to address this very severe groundwater quality
15 condition, and to address the nitrate loading to
16 groundwater to better protect drinking water. So the
17 way you can do that is by tracking the inputs, the
18 nitrate going top, going into the system, or monitoring
19 the Discharge, which is leaving the root zone. Staff
20 agrees with the comments that it's very -- it's more
21 costly to measure the discharge, as described by an
22 earlier commenter. So we if we can't measure the
23 discharge, then we have to measure something else, as
24 an indicator to nitrate load. This nitrate balance
25 ratio is the nitrate applied over crop need.

Page 344

1 Let me first say that this concept was
2 developed in coordination with UC extension, as well as
3 certified crop advisors and both representatives from
4 our region and from Region 5, a similar approach is
5 already in used in Region 5.
6 So the nitrate balance ratio is the total
7 nitrogen applied, over crop need. The grower
8 determines that bottom denominator. They justify the
9 amount that their crop needs.
10 So, for example, if you're in a certain soil
11 type, or if you have a tissue test or if you can
12 determine your crop based on that, and apply that
13 justification, that's acceptable.
14 Another way to do it is you can use reference
15 literature -- for example, US crop cooperative has
16 information on certain varieties of lettuce of 120 to
17 140 pounds per acre. So there is many different ways
18 you could identify crop needs. The Water Board does
19 not specify how much nitrogen the crop needs. The
20 grower gets to provide that information. What we want
21 to see is the amount that growers are applying relative
22 to what they're seeing their crop needs.
23 **MR. TOMLINSON:** So that was strawberries I think
24 the research would show that, in general, the crop
25 needs 200 pounds. So that's 200 on the bottom. And so

Page 345

A6028BD
PANEL HEARING MARCH 14, 2012

1 the 1.2 would result in the top number being you can
2 apply 240 pounds, and that's a target and so you run
3 into what does a target mean? What if you did more.
4 And then also the crop needs parts. I note, so there
5 are some varieties of strawberries in certain areas of
6 Santa Maria where you have a really long growing
7 season, so you might really bump up against that 240,
8 you might apply 250, but what that grower needs is 210
9 or 220, so that's where a lot of this uncertainty comes
10 from, and then it gets even tougher for some crops who
11 are in the 1.
12 **MR. JEFFRIES:** Mr. Tomlinson, isn't another part
13 of this equation is the soil type --
14 **MR. TOMLINSON:** Absolutely.
15 **MR. JEFFRIES:** -- doesn't to make a difference?
16 **MR. YOUNG:** Yes.
17 **MR. TOMLINSON:** Because that's going to define the
18 crop region, the soil conditions, the climate --
19 **MR. YOUNG:** So the problem, then, is the ratio
20 defined, either 1 or 1.2, is that it?
21 **MR. TOMLINSON:** Well, it's the ratio combined with
22 the context of the Order. Is it a good thing to do? A
23 required thing to do what if you miss it? What if it
24 has one farmer and you pick one number, and, I mean,
25 what's the range of acceptability, I think that's what

Page 346

1 a lot of people are kind of reading there.
2 **MS. SCHROETER:** Let me just follow up real quick
3 in terms of the actual numbers 1 and 1.2. Those were
4 numbers suggested by the research group that we
5 pulled. Both those numbers were not developed by
6 Staff. Staff was in that group and agreed with the
7 development of those numbers, but that was based upon
8 the research and the professionals that. The reason
9 why strawberries are 1.2 is strawberries are an annual
10 crop. So -- and so basically you have the nitrogen
11 that you use throughout the process. Vegetables are in
12 rotation, so you have the opportunity to use the
13 nitrate left in the system into your next crop, so
14 we're not accounting for nitrogen that's left in the
15 system, and so over a three rotation a nitrate balance
16 ratio of 1 is accommodated for nitrate level in system,
17 so it's not 100 percent effective system and that's
18 based upon what the researchers told us.
19 **MR. YOUNG:** What do the farmers, what comments did
20 they gave you about using ratios like that, 1 and 1.2?
21 **MS. SCHROETER:** We -- there was no suggestions to
22 alternatives.
23 **MS. DUNHAM:** We were never asked.
24 **MR. TOMLINSON:** We do this type of work. The
25 Strawberry Commission jointly funded it. This is the

Page 347

1 exact kind of work that farmers want to know. When it
2 turns into a regulatory requirement is when everyone
3 kind of says hold on a second they're putting a cap on
4 my fertilizer, which is major part of my formula, my
5 receipt, for whether I get my plants to come early or
6 late. Now you're really interrupting what I do on the
7 farm. And so that's where the big difference is. I
8 think it's good work, but when it makes the regulatory
9 requirement it's a real challenge, compared to like the
10 rubber dam, where that diversion from the rubber dam
11 was going to take out 200,000 pounds of nitrogen out of
12 surface water drain.
13 So there's more comprehensive ways that
14 agricultural can remove nitrogen from the environment,
15 and prevent it from going into the Bay, then just a
16 simple cap. So I think to the extent that that cap can
17 be a guide or, you know, some sort of research or type
18 of thing that coalition could work on, I think it's
19 useful. It's just the more you talk about a regular
20 requirement, it's going to be challenging.
21 **MR. YOUNG:** So are these ratio numbers -- I don't
22 want to use the work actionable, but did they create a
23 potential for violation if someone -- Mr. Thomas,
24 please. I hear you, but I'm asking a question.
25 **MS. SCHROETER:** They are a target in Table 5, I

Page 348

1 believe, in the Order, which is a compliance target.
2 **MR. YOUNG:** So a farmer could potentially be in
3 violation of that target.
4 **MS. SCHROETER:** The order requires to growers to
5 achieve this minimum reading within 3 years.
6 Let me just move on to this slide. This is
7 the slide that you saw from Dr. Hartsworth that he
8 presented at the management meeting back, I think it
9 was last year. This is for lettuce.
10 So in that middle column you have what
11 basically are the ratios. So you see below, average in
12 that column of zero to five and a high average of 2.8.
13 What that demonstrates is that it is achievable, and
14 that some growers area very close. The average 1.5,
15 the average lowest is 1.1.
16 What I want to emphasize here, it's a way for
17 Staff and the Water Board to evaluate the progress. We
18 aren't trying to nickel and dime growers by saying you
19 can only apply 1.1 or 1.2.
20 What we know from that data is some growers
21 were are at 4.0, 3.0. So what we're trying to do is
22 identify those real high ratios.
23 **MR. YOUNG:** Well, can you do it while just making
24 a target and not be something that creates a
25 violation?

Page 349

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. SCHROETER:** We could move to a milestone.
2 **MR. YOUNG:** I mean, since there's a lot of
3 variations and this is going to be something new for
4 them, I mean --
5 **MS. SCHROETER:** That's an option.
6 **MR. YOUNG:** I don't see the need to have it a
7 violation immediately.
8 **MS. SCHROETER:** We can take that into
9 consideration and move it to the milestone table. I do
10 want to say is, this is the only target for
11 groundwater. So this is the only indicator of a
12 requirement to reduce loading. So in response to the
13 severe water quality and the need to protect your
14 groundwater, we're trying to set a standard for reduced
15 loading and this is the only thing in the Order. We
16 can move it. It is a possibility.
17 **MR. YOUNG:** I understand what you're trying to
18 do. I'm not disagreeing with you. I'm just trying to
19 make it a little bit more, maybe, workable in the
20 context of what the state of the art is.
21 **MR. TOMLINSON:** So this is where they tile drains
22 come in, because the tile drains are mitigation for
23 leaching. But they're not exemptions. You're required
24 to achieve the standard. So as the tile drain, drains,
25 then you have high nitrate in the drain. So it's

Page 350

1 mitigation on groundwater, but it goes into the surface
2 water, and then you have to read the biostimulatory
3 threshold, if I got that right. So that's one tenth of
4 the drinking water. So the tile drain has to be
5 cleaner than the drinking water on nitrate, but if the
6 tile drain is in the right spot, like in the Boronda
7 area, it goes through the recycling plant and all that
8 nitrogen gets removed from that environment.
9 So that's where it's a more -- there are
10 solutions. We absolutely have to take nitrogen out of
11 the environment. There is no question, we have to get
12 a handle on the groundwater issue, but there are some
13 more complex solutions that are out there that perhaps
14 are not appropriate for the Ag Waiver, right? They'll
15 be worked out in other forms.
16 **MS. SCHROETER:** Just to clarify, there's no
17 standard that tile drains have.
18 **MR. TOMLINSON:** For surface water? There is no
19 standards for nitrates in surface water?
20 **MS. SCHROETER:** There is no standard, no.
21 **MR. YOUNG:** Okay.
22 Mr. Johnston?
23 **MR. JOHNSTON:** Yes.
24 **MR. YOUNG:** Mr. Delgado? Mr. Jeffries?
25 **MR. JEFFRIES:** So one of the points that was made

Page 351

1 in favor of the Ag Alternative Proposals today was that
2 it would require many, many more farms to have a
3 nutrient plan, than the number of farms in Tier 3. And
4 I -- I really understand what we're hearing from Staff
5 about if this is the only, um, measure, the concrete
6 measurable thing in terms of eliminating nitrogen
7 groundwater, which is supposed to be our highest
8 priority. I understand why that is a very hard thing
9 to say, fine, we'll just make it a milestone.
10 My question is, so when you're talking about
11 nutrient management plan in the Ag Alternative, what do
12 they do? Is it just have a plan and whatever it is
13 it's okay, or are there metrics that have to be met
14 there?
15 **MR. TOMLINSON:** So that would be developed, but
16 this is the type of thing would be included in the
17 plan, including testing the soil and testing the water,
18 so you know the total amount of nitrogen that's
19 available. And the difference is use agriculture,
20 embrace agriculture, and let agriculture work for you.
21 That's the whole concept of the coalition is that you
22 get agriculture working on these things that, um -- but
23 as soon as you them into a hard number and into a
24 regulation, then you get, just, weird anomalies.
25 **MR. JEFFRIES:** I understand that nobody likes to

Page 352

1 be told what to do, and farmers like it less than
2 almost anybody, but I'm still trying to understand how
3 this would work. So you're saying that there would be
4 some sort of similar process with nutrient plans in the
5 Ag Alternative. Now would that be simply up to each
6 individual farmer to grab what that process is, and
7 would -- or would there been some sort of formula, like
8 this, that the Executive Officer would have to approve
9 in the -- that's what I'm trying to get at here.
10 **MR. TOMLINSON:** As the coalition was developed,
11 that would be something that would be approved as part
12 of that process by the Staff.
13 **MR. JOHNSTON:** So what you're saying is there
14 would still be something like that 1 or 1.2 number, the
15 difference is that there would be farmer participation
16 in developing it, but that, essentially, the Board,
17 through the EO, would still have to approve it; is that
18 correct?
19 **MR. TOMLINSON:** I'm saying that's possible, yes.
20 And that, yes, it's possible that you might get more
21 folks participating than just two or three right now.
22 I'm not going to say there's going to be this huge rush
23 for everyone to jump in.
24 **MR. JOHNSTON:** No, I'm not asking who's going to
25 participate. I'm trying to get -- I'm trying to get a

Page 353

A6028BD
PANEL HEARING MARCH 14, 2012

1 handle -- because it's been all kind of squishy to me,
2 what the actual -- who's approving what in the Ag
3 Alternative process -- and maybe I'm asking the wrong
4 person -- and part of the problem is who are we talking
5 to? But I'm trying to get a handle on whether, in
6 fact, under the Nutrient Plans under the Ag Alternative
7 some measurable standards, in terms of nitrogen nitrate
8 loading?
9 **MR. TOMLINSON:** I think Tess wants to answer that
10 question.
11 **MS. DUNHAM:** The concept with the Ag Proposal is
12 that there would be a part of these. The Nutrient
13 Management Plan is something that looks definitely at
14 the exact type of things, but it doesn't become the
15 regulatory in point. It becomes a tool in order to
16 evaluate what the individual farmers are do.
17 In other words, go back and remember
18 Dr. Los Huertos box plot in his report? And, basically
19 what we do is taking this type of information, and
20 putting it into that box plot format to take a look at
21 to see where are growers at? Who is up there at the
22 port? That's who we should be going and auditing and
23 doing the practice effectiveness evaluations, and we
24 should be targeting to work with to make sure they're
25 making changes through that -- using that box plot

Page 354

1 formula, but not as a regulatory end point.
2 **MR. JOHNSTON:** Well, let me see if I understand.
3 Let me repeat back, and you tell me if I've got it
4 right.
5 What I hear you saying is that under the
6 Ag Alternative they would still have to be making some
7 version of this calculation of nitrate loading, but
8 that there would not be -- in terms of what you call a
9 regulatory end point, there would not be a standard
10 that they would have to hit, everybody would make the
11 calculation, everybody would be somewhere on the --
12 maybe, conceivably in the range we see on that chart
13 of .5 to 2.8, and that hopefully over time that would
14 go down.
15 Is that correct?
16 **MS. DUNHAM:** That is correct. And also I would
17 say and with the input of the technical advisory
18 committee to really determine, for that individual farm
19 and operation, have they appropriately managed their
20 nitrate -- their nitrogen and their nutrient inputs.
21 Have they appropriately managed it, based upon their
22 site specific information, in order to determine if the
23 ratio that they picked is appropriate for their
24 operation. The ratio, you know, this is not a hard and
25 fast for every operation. You have to consider it on a

Page 355

1 farm-by-farm basis.
2 **MR. JOHNSTON:** I understand it's going to vary
3 farm by farm. Would it be appropriate, then, for a
4 third-party coalition to have a weighted-average target
5 that overall the coalition would have to hit? Because
6 we're -- our goal is to get the nitrate loading down.
7 **MS. DUNHAM:** And I would defer to Dr. Los Huertos'
8 technical advisor, whether that would be appropriate or
9 not, I don't know. I would apologize now.
10 **MR. YOUNG:** Do you support his work?
11 **MS. DUNHAM:** Do I whose his work?
12 **MR. YOUNG:** -- Dr. Los Huertos. Is he speaking on
13 behalf of Ag?
14 **MS. DUNHAM:** Dr. Los Huertos, I believe, is
15 speaking for himself.
16 **MR. YOUNG:** Okay.
17 **MS. DUNHAM:** But Dr. Los Huertos, as he said, has
18 done a lot of work in agriculture, and while we don't
19 agree with everything he says, we do respect him and
20 his technical abilities, and he's provided a lot of
21 really good information, and I think that when we
22 develop the technical advisory committee, we will look
23 to use Dr. Los Huertos to help with that technical
24 advisory committee because of his technical information
25 and knowledge that he has with these issues.

Page 356

1 **DR. LOS HUERTOS:** So one of the issues that
2 effectively changes it is not just nitrogen in the
3 soil, it's nitrogen moving below the soil.
4 So it's easy to prescribe things like drip
5 irrigation, as a sort of overall practice and say
6 that's good, and that's a lower risk, than maybe flood
7 irrigation. But the problem is if you mismanage your
8 drip irrigation, you release just as much nitrate.
9 So the part that is missing here, and that's
10 that part, in theory, is the coalition approach, you
11 don't just look at the nitrogen manager valve, you look
12 at the overall farm management plan in terms of the
13 risk. So how well is the irrigator doing? Is the
14 irrigator paying attention to the soil moisture?
15 Because nitrogen is a combination of nitrogen in the
16 soil and the leaching potential because of water
17 movement.
18 If nitrogen movement is not appropriately
19 addressed, in terms of irrigation, whatever the ratio
20 is, it's a nice easy category to select, but it
21 actually has nothing to do with leaching, because
22 leaching is the combination of multiple effects.
23 So what we're trying to do is bring a
24 somewhat subtle approach, to be able to look at
25 leaching from at full risk, so it will be much more

Page 357

A6028BD
PANEL HEARING MARCH 14, 2012

1 robust, and I will say probably require a little more
2 effort from farmers, not because of affording, but in
3 terms of really paying attention to their farms.
4 And the other thing that I have to say is
5 this, managing nitrates on the soil takes a lot of
6 practice. I have to say this is generally true of all
7 growers I talked you finally figured it out in
8 15 Years. The first five years you don't know what's
9 going on and every year is different in terms of
10 rainfall, then the next five years you figure out how
11 you can actually make money, then you actually feel
12 like you know what you are doing. The problem is you
13 have so many different levels of where people are in
14 that category, that you really need a lot of work to
15 hand hold them through the nitrogen management process,
16 in terms of -- and again you may have simple nitrogen
17 balance approach, but if you don't measure the
18 nitrogenization of the nitrogen generation which became
19 organic matter, which when buried, you may release a
20 lot of nitrogen when the temperatures are boiling, and
21 over irrigate that one time.
22 So what I'm trying to say and what I'm trying
23 or express is that it's not -- be more subtle. I think
24 what I would say is I fear we're going to be using
25 these budgets and then we're going to come back to the

Page 358

1 growers and say you're leaching a lot of nitrates. We
2 need to lower that nitrogen ratio even more. And
3 that's not the solution.
4 **MR. JOHNSTON:** Dr. Los Huertos, if I can try to
5 get an answer to the question that Ms. Dunham punted to
6 you.
7 The question was, do you think that -- I
8 understand the it's different on every farm response to
9 this nitrate loading target. And I also understand
10 what you're saying about irrigation, and I hear what
11 Staff is saying that this is the only measure that
12 we've got at this point that actually deals with
13 nitrate loading. So my question to Ms. Dunham was, do
14 you think if the it's different on every farm argument
15 mandates the, we want to experiment with our
16 creativity, or mandates against individual standards
17 that it would be appropriate for a coalition in or
18 perhaps a subwatershed area to have an aggregate
19 target, get a weighted-aggregate target that somebody
20 has to be accountable somewhere.
21 **DR. LOS HUERTOS:** I agree. And, actually, that's a
22 really good idea. I like that idea a lot. But it
23 can't be all by itself. It has to be linked to
24 irrigation efficiency and management practices. If you
25 pull that one piece out you're trading a flimsy house

Page 359

1 for --
2 **MR. JOHNSTON:** I understand that, but both the
3 public and the Board has to have some things they can
4 look at to actually see what's going on.
5 **DR. LOS HUERTOS:** Yes.
6 **MR. DELGADO:** Does the nutrient balance ratio of
7 1.2 or 1.0, does that included the nitrate that's in
8 the water that's being applied to the crop.
9 **MS. SCHROETER:** Yes, it does.
10 **MR. DELGADO:** Okay.
11 **MR. YOUNG:** Okay.
12 **MR. DELGADO:** So the only thing it doesn't include
13 is the residual, if there is any, from prior corps.
14 **MS SCHROETER:** That's correct. And, actually,
15 that was in response to comments that we got from
16 agricultural stakeholders. So the example that we were
17 using and the model was the Dairy Order, Region 5,
18 which does require growers to account for residual. We
19 do not and we clarified that in the Order.
20 **MR. YOUNG:** Go ahead, Mr. Thomas you can
21 continue.
22 **MR. THOMAS:** The section that is at issue here and
23 all this discussion you could find in Table 3, entitled
24 Schedule for Compliance. And it says, achieve nitrogen
25 balance ratio target for crops equal to one for crops

Page 360

1 in annual rotation, season vegetables, by October 1,
2 2015 and it's absolutely with compliance.
3 **MR. DELGADO:** Okay. Thanks for clarifying that.
4 So in lay person's terms, if I'm a grower of
5 lettuce, I consider how much nitrogen I have in my
6 water, I have to monitor my water to know that, because
7 that counts, right? So I know how much nitrogen is in
8 my water, and I figure out my soil type and I tell the
9 Board, I tell the Staff I need this much nitrogen for
10 my crop, given all the conditions that I've considered,
11 and Staff looks at it says that looks reasonable,
12 okay. You've named your own target. And so the only
13 thing that you're not accounting for, or I'm not
14 accounting for, is the residual. That's wherein lies
15 this debate whether it's 100 percent or not, and you're
16 saying, Staff, it's not 100 percent, because we are not
17 making you count the residual, so you actually get to
18 apply more.
19 **MS. SCHROETER:** Yes.
20 **MR. DELGADO:** In other words, if I go back to you
21 and say I'm doing something different than three months
22 ago, I need more nitrogen or my need is higher than I
23 told you and then staff would probably say, okay,
24 that's all right then your denominator is now
25 different, go with that new denominator?

Page 361

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MS. SCHROETER:** You actually report annually, so
2 you don't tell us every time, you just represent it at
3 the end. And, actually, FEMA says that we do have
4 growers right now who are already reporting this type
5 of information. Monica has developed a spreadsheet
6 right here, so I should probably blow this up. And you
7 can see there are growers right now successfully
8 putting in this type of information.

9 **MR. DELGADO:** Okay. My last question is something
10 that Dr. Los Fuertos referred to that if you just look
11 at this nitrate balance ratio by itself, you're missing
12 the big picture and and you're chasing your tail. And
13 my question is, isn't it true that this whole Ag Waiver
14 is looking at all of the different practices going on,
15 on the farm. It's not just relying on that. But in
16 this case, this is being used for a certain purpose of
17 monitoring the water quality, but it's not isolated
18 from everything else that the Best Management Practices
19 that are going on.

20 **MS SCHROETER:** That's correct. In general,
21 there's farm plan requirements that includes many
22 elements, one of them is irrigation management, another
23 one is nitrate management and on and on. And they can
24 also demonstrate various deficiencies to make sure
25 we're not depercolating.

Page 362

1 **MR. DELGADO:** Okay. And this will be my last
2 question. If I tell you my crop need and you say okay
3 and you say okay, and I make my annual report, or
4 somehow you find out that I'm applying more than my
5 crop needs, what kind of penalty or consequences to I
6 face under the Draft Ag Order?

7 **MR. KEELING:** Using what we talked about earlier
8 today we would initially contact the grower and talk to
9 them about this information. And we would say why is
10 your crop need so high?

11 **MR. DELGADO:** Well, my example was you find out
12 I'm applying a lot more than we agreed to. So I guess
13 you would call me or email me and say what's up?

14 **MR. KEELING:** Yes, we talk to the grower and try
15 to figure it out. So we would work with them to lower
16 this?

17 **MR. YOUNG:** Okay. Thank you for your comments.

18 **MR. YOUNG:** Thank you for our comments.
19 Mike Brown, Dirk Giannini.

20 **MR. BROWN:** I'm Mike Brown, that's B-r-o-w-n,
21 representing the Coalition of Labor, Agriculture and
22 Business. I'm the Government Affairs Director for both
23 Santa Barbara Counties and San Luis Obispo County. I
24 had a 42-year career mainly as a City Manager and
25 executive in various jurisdictions and dealt with a

Page 363

1 plethora of water pollution issues. Some of them quite
2 large, in fact, almost entire cities, trichloroethylene
3 then TBS, VOC, the whole thing.

4 And this Order is very complicated, and if
5 you don't go with the Ag Order and somehow you do
6 determine to adopt the Staff version, in some fashion,
7 what you might want to think about is doing a test,
8 doing some pilots, see in some of these areas Staff
9 venture people are already doing things, run a couple
10 of geographic and a couple of Tier pilots and tease out
11 all of these issues that Ags talking to you about, and
12 others. But before you pull the trigger, it's like
13 when the simplest thing, a jurisdiction decides to talk
14 a boulevard and substantially change the speed zones
15 and put in stop signs or something, they don't pull the
16 enforcement trigger right away. They provide warnings,
17 and let people get used to it. And I present that
18 process, having made many mistakes myself, so you might
19 want to pilot this thing, get it going, and then we'll
20 all learn what works and what doesn't. All these
21 highly technical conundrums might get clarified.

22 Thank you very much.

23 **MR. YOUNG:** Thank you for your comments.
24 Mr. Giannini, Mr. David Costa, Rick Sweet,
25 Ben Fairly, and Marla Jo Buton.

Page 364

1 **MR. GIANNINI:** Dirk Giannini, G-i-a-n-n-i-n-i.
2 Mr. Chair, next time, make sure I'm before
3 Mr. Tomlinson in these late meetings.

4 **MR. TOMLINSON:** I get a bad rep from my own guys.

5 **MR. GIANNINI:** Good evening, Chair and Board
6 members.

7 My name is Dirk Giannini from Leafy Green
8 Growers, Salinas. Mr. Michael Thomas used an analogy
9 earlier this morning that the best is a good offense.
10 I want to reflect on that analogy.

11 I cannot agree more when it comes to
12 improving water quality. The gain, is going to be one
13 on the ground with growers, such as my -- myself that
14 implement practices on the farm, not by submitting
15 multiple layers of monitoring results and paperwork
16 that has nothing to do with the improvement of water
17 quality.

18 The Staff Proposal, as presented, has a
19 tremendous amount of required paperwork that is to be
20 submitted, which is onerous. Compliance of such laws
21 that we are discussing today usually comes naturally
22 with good stewardship and strategic business plan, when
23 considering the safety of our environment and our
24 employees. However, in this case, we agree this
25 request being made by the Staff Proposal is up and

Page 365

A6028BD
PANEL HEARING MARCH 14, 2012

1 beyond, and inhibits this compliance, when compared to
2 other regulations.
3 Staff and Agriculture are very apart. So far
4 apart, that today that Staff just increased their Tier
5 3 by 200 growers, after listening to Sergio Sanchez'
6 public comments -- this is Assemblyman Luis Alejo's
7 representative.
8 Even though Staff is telling me it is not
9 required to line freshwater basins all the associations
10 of that I am a member of, and all of the meetings that
11 I have attended, including legal expert opinions are
12 telling me the opposite. They're all suggesting that I
13 line these catch basins. These two small examples lead
14 me to believe that we have very different
15 interpretations of the Staff Proposal in many
16 categories. This was also highlighted by the 11
17 misconceptions presented today by California Farm
18 Bureaus and Kari Fisher.
19 **MR. YOUNG:** Can you rap it up, Mr. Giannini?
20 **MR. GIANNINI:** I hope and urge you include the
21 Ag Proposal in the game plan, in addition to the
22 inclusion of Dr. Los Huertos as an Ag Alternative.
23 Thank you.
24 **MR. YOUNG:** Thank you for your comments.
25 David Costa, Rick Sweet, Ben Fairly.

Page 366

1 **MR. COSTA:** Thank you, Mr. Chair.
2 David Costa, C-o-s-t-a.
3 In the Draft Order for Tier 3, it stated
4 today, 103 farms, the Farm Water Quality Buffer Plan
5 and Irrigation Nutrient Management Plan are said to be
6 only required of a subset Tier 3 grower. I don't know
7 what the definition of subset is. But the numbers that
8 came out today says as required, those two are required
9 between 55 and 60 percent of the growers, over half of
10 the Tier 3 growers.
11 So one question I have is at what point have
12 we created a Tier 4, by requiring those components of
13 such a large group of Tier 3 growers, for those of whom
14 it's required the irrigation Nutrient Management Plans
15 effectiveness Monitoring, it says, must be conducted or
16 supervised by a registered professional engineer, a
17 professional geologist, or a certified crop advisor
18 with hydro-geology experience, I don't know of one that
19 has that kind of experience and the CCAs that I talk to
20 today aren't aware of any either. In my calculations
21 from the analysis I turned in of our operation of nine
22 Tier 3 ranches, and for the comments that came earlier,
23 they are a little hard to bear. Everybody says that
24 the problem is in the Tier 3 farms. Well, as a grower
25 that has, you know, a good share of Tier 3 farms, our

Page 367

1 calculations show nine out of 103, so I would question
2 a 103 because we are one operation, although we're a
3 large operation. We spent last year, \$179,000, in
4 pre-application solo testing for nitrogen prior to
5 those nitrogen applications. Okay. And I just want to
6 make sure that -- it's difficult to get the sense in
7 the room, and that's information I wanted to share.
8 **MR. YOUNG:** Why did you spend that amount of
9 money.
10 **MR. COSTA:** We're testing soil instead of tissue.
11 In my opinion, testing tissue tells you what's in the
12 sand. It would be like saying, I still have gas
13 because the engine is running in my car. It doesn't
14 tell us what's underneath. It doesn't tell us, I don't
15 think, what's going to happen in the next several days,
16 or next week, or two weeks. And because of the number
17 of acres that we sample, we sample before every
18 prepared operation, both in the fall and on the
19 turnaround between the first and second crop. We are
20 trying to test between every side dress application on
21 a growing crop.
22 So for us to recoup those numbers, my math is
23 if we can just save about half of a fertilizer
24 application. If we have four applications of
25 fertilizer in the life of a crop, we basically save

Page 368

1 half of one of those to pay for that program before we
2 can start recouping the savings that are frequently
3 asked questions sheet said that we would be receiving.
4 **MR. YOUNG:** So about \$179,000 spread over how many
5 acres? I know before you talked about --
6 **MR. COSTA:** 5,400 land acres, averaging 2.1 crops.
7 **MR. YOUNG:** Okay. All right.
8 Thank you very much.
9 **MR. JOHNSTON:** Just a quick question.
10 **MR. YOUNG:** Yes.
11 **MR. JOHNSTON:** Are you saving that half of
12 fertilizer application at this point? I don't know how
13 long you've been doing this, I'm just curious.
14 **MR. COSTA:** The program is two years in the
15 making. The expenditure two years ago wasn't that
16 great. In the first year, none in all our acres. The
17 goal is to recoup that and I guess from that exercise
18 is farther down the road. That's more -- that's a back
19 burner issue right now. We are trying to get to the
20 point, you know, people are documenting the need for
21 every application, so I'm confident that we'll get
22 there. I don't think we are there yet. We haven't run
23 full circle over all our acres, over the crop area.
24 **MR. JOHNSTON:** Do you test your groundwater to
25 know how much nitrogen is in the irrigation to?

Page 369

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. COSTA:** Yes, we do.
2 **MR. DELGADO:** And, I guess, it's substantial
3 enough to make a difference in your application?
4 **MR. COSTA:** Well, it varies by area. It varies by
5 ranch. Within our different growing areas we have four
6 distinct growing acres in the Salinas area, where we
7 farm. You know, the history on those numbers is they
8 vary. Some have gone up; some have gone down. Some of
9 that, you know, depends on the area, and some I don't
10 know that we can attribute, you know, the cause to does
11 seem to be somewhat variable, and the other place where
12 it gets complicated for us is an arrangement where
13 multiple wells that are either interconnected that
14 irrigated cross blocks and do gave flexibility, maybe
15 all the blocks that need to irrigate this side of the
16 range or all this half the ranch, it becomes a harder
17 number to pin down which number do I use, which well is
18 running in this block this time. So the budgeting
19 issue gets complex.
20 **MR. DELGADO:** And I really appreciate hearing this
21 detail about your operation.
22 **MR. COSTA:** You're welcome.
23 **MR. DELGADO:** When you talked about trying to save
24 one half of the nitrogen application in order to recoup
25 your 180k?

Page 370

1 **MR. COSTA:** Yes. That's a round number.
2 **MR. DELGADO:** You seem to say it easily, like this
3 wasn't priority. I mean, we keep hearing how
4 competitive the industry and that what you do on you
5 ranch and your farms, that you may not want your
6 competitors to know, because you're trying to, you
7 know, keep your -- you're trying to get your product to
8 the market faster. So is that true that the
9 information that you're sharing with us is not
10 proprietary, in general?
11 **MR. COSTA:** I don't know exactly how many detail I
12 shared with you. I think there's a lot to what you're
13 trying to do that's not all there on the table right
14 now, whether it, in fact, works long term or not is
15 still to be determined. I mean, it's still a work in
16 practicing. It's an example the type of things that
17 growers are trying to do in one way or shape or form or
18 through, you know, alternative method. This might not
19 be a method to everyone. It's a commitment that we
20 made because we knew that we -- because of the size of
21 our operation, we need to figure things out. We can't
22 wait for last minute. Someone else may be able to do
23 that. Somebody that has it dialed in better might be
24 able to do that. I would say that, probably, you
25 know. Do we recoup that investment? In that testing,

Page 371

1 the worse grower has a better chance of recouping that
2 investment, because it means we're farther off in
3 everything we've been doing for last half a century.
4 The more we have it dialed in, in the recent past, then
5 there is going to be less to be gained from it. So I
6 guess I hope I don't recoup my investment because that
7 means we're doing a better job up to this point.
8 **MR. DELGADO:** You mean you'd have less ground to
9 make up because you're already doing so well, but if
10 you're already doing so well it's possible there is no
11 ground to make up?
12 **MR. COSTA:** But this is the way that I chose to do
13 it.
14 **MR. DELGADO:** Okay. Very small question. I'm not
15 asking for any more information now, but, in general,
16 are you more sensitive to the priority nature of your
17 groundwater supply, and it's monitoring results then
18 you are for the information you've disclosed on the
19 nitrogen cycle, and how much money you spent for the
20 testing yourself?
21 **MR. COSTA:** Yeah.
22 **MR. DELGADO:** The water is more sensitive than the
23 soil?
24 **MR. COSTA:** I would agree with that.
25 **MR. DELGADO:** Thanks again very much.

Page 372

1 **MR. YOUNG:** Okay. Thank you.
2 Rick Sweet.
3 **MR. SWEET:** Rick Sweet. Good evening and I
4 apologize, I have a cold and I sound funnier that, I
5 guess. I just wanted to highlight one point. What
6 we're trying to do that's not out here on the table is
7 determine whether in fact this works long term or not.
8 I mean it's still in progress. The fact that 97
9 percent, more or less, of growers will be unaffected by
10 the new requirements in the proposed Order. 97 percent
11 of growers. That's the amount of growers who are
12 likely to fall into Tier 1 or Tier 2 and will --
13 **THE REPORTER:** Won't or will? I'm sorry, I didn't
14 hear you.
15 **MR. SWEET:** They will not face additional
16 significant requirements and it just makes me ask the
17 question, why are we still here? Why are we talking?
18 Really, 97 percent? Um, I believe that the folks that
19 are still rallying against this aren't necessarily
20 representative of the majority of growers in the
21 meeting. I think there is actually a significant
22 division amongst the agricultural community itself and
23 I think that the remaining group of growers, who are
24 still here, are the ones who have anything at all at
25 stake, and I don't mean to diminish their concerns, but

Page 373

A6028BD
PANEL HEARING MARCH 14, 2012

1 I think the vast majority of the growers in the region,
2 if you were to ask them individually and not their
3 Bureau reps or, you know, if not supportive would, at
4 worse, be indifferent to what's being said.
5 So my question to you, you know, what level
6 of support does it take, support or indifference, does
7 it take for the board to approve an Order? Are you
8 really going to wait until we have 100 percent support
9 from the regulated community to approve this?
10 97 percent are virtually unaffected by this.
11 The environmental community is going to get
12 what they wanted and we are not happy with the Order.
13 We wanted something, we didn't get it, we are not going
14 to get it. You know, this isn't a perfect Order, but
15 it's been three years and we need to get moving again.
16 There are projects, there are collaborations, there are
17 programs that could have been happening right now that
18 haven't, because people are waiting to see how the
19 chips are going to land on this thing. We need to get
20 back on track. You have an opportunity tomorrow to do
21 that. I hope you vote to support the Staff Proposal.
22 Thank you.
23 **MR. YOUNG:** Thank you for your comments.
24 Marla Jo Bruton, Mary Mundos, Buta Ratar,
25 Robert Chapman, William Fortat, Jack Berian, Michael

Page 374

1 Salsbury, Gordon Hensley, and that's it.
2 Marla Jo Buton.
3 **MS. BUTON:** I have a specific question that I hope
4 that someone here at Staff can answer or direct me to
5 someone who can answer later. I am interested in
6 impacts of nitrate pollution. I come from the
7 community of Morro Bay and we have public drinking
8 water wells impact. My city has 1.5 million and I'm
9 wondering if that was used for the plant?
10 **MR. YOUNG:** Ms. Buton, you can ask that question
11 but not here because it doesn't have to do with the Ag
12 water.
13 **MS. BUTON:** Well, why? This has to do with the Ag
14 Order.
15 **MR. YOUNG:** Well, that can be answered later.
16 **MS. BUTON:** I'm here representing my city.
17 **MR. YOUNG:** Address your comments if you would to
18 what's in the Ag Water Order. That's what this is
19 about.
20 **MS. BUTON:** When you look here you have farm,
21 labors, San Lucas, King City and San Jerardo and I'm
22 curious as to why Morro Bay was removed from that and
23 if that has to do with agriculture not being the main
24 source of our pollution. The farmers are being blamed
25 and there are concerned citizens who believe that it's

Page 375

1 explicated sewage. Everything here seems so
2 complicated and it is complicated but I live in a town
3 whose drinking water is permanently contaminated and
4 I'd like some answers.
5 **MR. YOUNG:** The staff would be glad to answer your
6 question but not here.
7 **MS. BUTON:** I disagree.
8 **MR. YOUNG:** It's okay for you to disagree.
9 Thank you for your comments.
10 Raymundo Butar.
11 **MR. BUTAR:** Raymundo Butar, R-a-y-m-u-n-d-o
12 B-u-t-a-r. I am here as a former analyst for pollution
13 of water and my work focused on gathering water quality
14 data for the Marin County and I collected raw data
15 directly from the site and worked with a senior analyst
16 and the information has been published in the
17 information presented last year in March by my
18 director. We wanted something, we didn't get it, we
19 are not going to get it. You know, this isn't a
20 perfect Order, but it's been three years and we need to
21 get moving again. There are projects, there are
22 collaborations, there are programs that could have been
23 happening right now that haven't, because people are
24 waiting to see how the chips are going to land on this
25 thing. We need to get back on track. You have an

Page 376

1 opportunity tomorrow to do that. I hope you vote to
2 support the Staff Proposal.
3 I urge on behalf of the EGCB, that the Board
4 look away from all this convoluted that's going on,
5 and take into consideration this issue that we are
6 talking about today is an issue of human rights, and we
7 have -- we're dealing with the well being of humans and
8 particularly in low income communities that are not
9 represented today.
10 And so please vote tomorrow and vote for the
11 Staff Proposal. And while it's not a perfect solution,
12 it's a step closer to bringing the nitrate level down,
13 and to bring a perfect solution.
14 Thank you.
15 **MR. YOUNG:** Thank you for your comments.
16 Robin Chapman.
17 **MS. CHAPMAN:** Robin Chapman, C-h-a-p-m-a-n.
18 Thank you to the Board for your service, to
19 the Staff for your hard work, to our hard working
20 stenographer and to our awesome awesome simultaneous
21 translators in the back of the room. Thank you.
22 In every industry there are people that have
23 to be already people who have to be dragged, kicking
24 and screaming to abandon antiquated ideology and to
25 embrace a new and better pyridine. Very often the

Page 377

A6028BD
PANEL HEARING MARCH 14, 2012

1 irrational argument against change that the new way is
2 too expensive. In every situation, remediation has
3 caused thousands of times more than prevention and can
4 anybody spell "Esterson."
5 Water is not a personal possession. It's
6 every individual's obligation to protect, and anyone
7 responsible for affecting the water quality should be
8 held responsible for it's long-term viability,
9 regardless of cost.
10 The Board has no responsibility to protect
11 farming. You're only obligation is to protect water
12 quality. I ask you to adopt the Staff recommendations,
13 with the addition of the environmental
14 recommendations.
15 And, oh, by the way, this is personal to me,
16 because I live on the confluence of the Estrella and
17 Salinas Rivers. Incidentally (sic), my husband and I
18 derive 100 percent of our income from farming.
19 **MR. YOUNG:** Thank you for your comments.
20 Is there a William here? Elena? No, okay.
21 How about a Bill? No, okay.
22 All right. Jack Darrian, V6 Ranch,
23 Hartfield?
24 **MR. DELGADO:** He left. He's a cattle rancher. He
25 thought he was not needed here.

Page 378

1 **MR. YOUNG:** John Salsbury. I know he's still
2 here.
3 **MR. SALSBUARY:** John Salsbury, S-a-l-s-b-u-r-y,
4 like the steak.
5 I'm a sixth generation California farmer and
6 we have water rights in the Sacramento Delta going back
7 to 1850, which are also in jeopardy. I also farm right
8 down the road, about five miles, which is a very
9 sustainable operation, 100 percent organic. Monica was
10 there in the beginning. It was just the two of us when
11 we started because one of the things we worried about
12 anything running off that ranch, because we had pretty
13 steep slopes and we have a lot of copper dams to hold
14 the water because if I kill one steelhead within an
15 inch or a foot long, it's \$13,000 a pop. You don't
16 kill one, you kill a bunch. We've been set up that way
17 a long time, and you don't have a farm for 163 years in
18 tenancy, without being good stewards of the land. We
19 pretty much have always been organic for the last 20
20 years and we're sitting in a spot though that got a
21 creek going on the west and south side of it, it is
22 only about 30 feet away from the vineyard, and we have
23 a municipal well for the people up above, homeowners,
24 and we also have an Ag well, so that immediately puts
25 me into Class 2 or 3, Tier 2 or 3 situation, which is

Page 379

1 kind of crazy because it's 100 percent organic.
2 I'm also a Board member on the Central Coast
3 Wine Grape Growers Association as is my colleague and
4 our Ag representative, Jean-Pierre, and I know he
5 shouldn't be able to vote because it is a conflict of
6 interest. I have a hard time thinking that he
7 shouldn't be up there with you asking questions as an
8 Ag representative.
9 Finally, what is this going to cost us?
10 Nobody has given me any ideas. I have a budget. What
11 is it going to cost me? I have not been able to get a
12 good read on that, and if I'm a Tier 1 or Tier 3,
13 whatever, it's almost like getting a bomb, you have to
14 get it and find out what's in it to see to what it
15 costs. And also, what about the guys above us? San
16 Luis Big Water Creek are sending down a million gallons
17 a day with nitrates in it, over the limit. I have
18 three wells next to it. Am I going to get dinged for
19 them sending down nitrates?
20 Am I going to get dinged for the homeowner's
21 association above us that is completely landscaped two
22 acre parcels sending down all pesticides? There's a
23 lot of things about the other people sending things,
24 the golf course, they have a system on both sides of
25 the creek am I going to get dinged for all that?

Page 380

1 Thank you.
2 **MR. YOUNG:** Thank you for your comments.
3 **MR. DELGADO:** Quick question.
4 Could you get the Staff to weigh in, if he's
5 organic, would he be Tier 1?
6 **MR. SALSBUARY:** No, but I have a well in the middle
7 of it that feeds 25 homes.
8 **MS. SCHROETER:** I'm sorry, I stepped out when he
9 was describing the ranch.
10 **MR. DELGADO:** If he does not use any pesticides,
11 is he Tier 1?
12 **MR. SALSBUARY:** Yeah, it's only five acres. This
13 one part, I've got plenty of others, but this one
14 parcel is five acres. It's on a creek on the west side
15 and Sea County Creek on the south side.
16 **MS. SCHROETER:** What type of crop do you grow?
17 **MR. SALSBUARY:** It's a vineyard and it's never had
18 a pesticide on it. It's bottom land. I don't have to
19 have fertilizer and the whole thing is organic, but
20 it's got a well near it.
21 **MS. SCHROETER:** You're in Tier 1.
22 **MR. JOHNSTON:** Unless he has a surface water or
23 impaired drinking water well?
24 **MR. SALSBUARY:** I have both of them.
25 **DR. HUNTER:** No, it's too nice.

Page 381

A6028BD
PANEL HEARING MARCH 14, 2012

1 **MR. JOHNSTON:** So we are clear, the Tier criteria,
2 as I understand it, Tier 1, all four of those criteria
3 have to be true. Tier 2, it's not an "and," it's an
4 "or," and if any of those things are true, you're in
5 Tier 2 or Tier 3.
6 **MR. DELGADO:** So that's the question. Is it
7 an "or" or an "and" for Tier 1, 2 and 3 on slide 42,
8 Page 21 of today's Staff report.
9 **MR. JOHNSTON:** Let me see the actual slide.
10 **MR. DELGADO:** Page 21 slide of your Tier
11 criteria.
12 **MS. SCHROETER:** Sorry, it's late.
13 **MR. DELGADO:** So are those four bullets under Tier
14 1, are those "ors" or "ands"? And do you have to have
15 all four or just one? Tier 1 with four bullets?
16 **MS. SCHROETER:** So that's correct, you have to
17 have all three of the top three or be a certified
18 sustainable practice.
19 **MR. DELGADO:** So if Mr. Salsbury has an impaired
20 surface water that he's discharging into or if he has
21 an impaired drinking water well, he cannot be in
22 Tier 1.
23 **MS. SCHROETER:** Actually, you know, this slide is
24 slightly incorrect relative to the drinking water well,
25 so the drinking water well piece is only invoked if you

Page 382

1 grow a certain crop type.
2 **MR. DELGADO:** Okay.
3 **MS. SCHROETER:** I'm sorry.
4 **MR. DELGADO:** All right. Then the three bullets
5 under Tier 2, are they "ors" or "ands"?
6 **MS. SCHROETER:** So the Tier 2 criteria are that
7 you use chlorophyll-a phosphor diazinon, if those are
8 "ors." So if any one of those Tier 2 criteria
9 applies, you are in Tier 2.
10 **MR. DELGADO:** So just being organic, doesn't mean
11 he's in Tier 1, it's depends on impairment of surface
12 and drinking -- or just surface areas?
13 **MR. JOHNSTON:** If he has 50 acres of grapes and
14 were organic and there was no impaired surface water,
15 and that's nitrate loading problem, he'd be in Tier 2
16 unless he was in SEP program; right?
17 **MS. SCHROETER:** That's correct, I believe.
18 **MR. JOHNSTON:** Okay.
19 **MR. SALSBUARY:** What about the drinking well for
20 the 28 homes above me?
21 **MS. SCHROETER:** I'm not sure what the question
22 is.
23 **MR. SALSBUARY:** What about, I have a well in the
24 middle of my farm that feeds 28 homes that are above
25 me.

Page 383

1 **MS. SCHROETER:** That doesn't effect what Tier
2 you're in.
3 **MR. JOHNSTON:** For his crops.
4 **MR. SALSBUARY:** Then I'm okay? It's organic.
5 **MS. SCHROETER:** But it there's --
6 **MR. SALSBUARY:** And I have got a creek 25 feet
7 away.
8 **MR. YOUNG:** Is it impaired?
9 **MR. SALSBUARY:** What's impaired mean?
10 **MR. YOUNG:** It would be polluted with certain
11 contaminants above a certain level and you would be on
12 a list 303D list of water bodies, just because it's a
13 creek.
14 If it's a clean creek, you're okay.
15 **MR. SALSBUARY:** I definitely know it is.
16 **MR. JEFFRIES:** As far as you know, it is.
17 **MR. YOUNG:** No problem.
18 **MR. SALSBUARY:** Okay. Thank you.
19 **MR. JEFFRIES:** But how would he know that when he
20 was is filling out his form to apply? Which direction
21 doe he?
22 **MR. YOUNG:** To the Staff to ask questions.
23 **MR. SALSBUARY:** I'm going to go stand in line right
24 now right now.
25 **MR. JEFFRIES:** Your fortunate to know a Staff

Page 384

1 person personally, not everybody has the good advantage
2 you have.
3 **MS. SCHROETER:** Sir, you can also go on our CCAM
4 website. It has the impairments available.
5 **MR. YOUNG:** So does the Order.
6 **MR. BRIGGS:** It's right here.
7 **MR. YOUNG:** I think it's easier said than
8 necessarily done.
9 **MR. KEELING:** And that's through the process
10 through the ENOI, Electronic Notice of Intent where
11 farmers are uploading their information. They have
12 been contacting us, contacting our team regularly for
13 the past year and a half, and we've had -- I don't know
14 how many contacts, hundreds if not thousands of
15 contacts, with growers, where they're actually coming
16 into our office to work with Monica, who is on the
17 team, to provide that information and figure out what
18 Tier they're in.
19 They're doing it.
20 **MR. YOUNG:** Okay. Thank you.
21 Michael, we are done with public comment.
22 It's closed.
23 **MR. JOHNSTON:** I'd to make a comment to make sure
24 the Staff understands at least I feel they should
25 together.

Page 385

A6028BD
PANEL HEARING MARCH 14, 2012

1 Thank you. I am speaking for myself as an
2 Board member, but Staff is going to be burning the
3 midnight oil tonight, to try to look at lots and lots
4 and lots of pages that Ms. Dunham brought, and we are
5 going to be hearing from you guys tomorrow, and I just
6 want to give you a sense of what I'd like to hear.
7 And, you know, a couple of folks in the environmental
8 community commented today that they didn't want this
9 Order to be watered down. They wanted the strongest
10 Order possible.

11 I'm looking at what is the most effective
12 order that we can pass that, um, that will most
13 effectively reduce -- or increase water quality that
14 meets, um, the legal standards, which we, as a Board,
15 are required to meet, um, and so I'm, so -- I -- what I
16 really don't want to hear from Staff, to be completely
17 honest, is no, this doesn't work.

18 Um, I'm sure I could venture to say -- I
19 could venture to say I'm positive there will be
20 elements on the proposal that Staff will give us an
21 opinion either on a policy basis or legal basis or
22 problematic and that's fine, but I want to hear more
23 specifically what the individual policy and legal
24 issues are that would need to be resolved for this to
25 work, as well as -- frankly, I do want to hear your

Page 386

1 recommendations and your opinions as to what's good and
2 not so good about this, but I particularly want to hear
3 more specifically what the legal issues are and policy
4 issues to be able to resolved this.

5 Thank you.

6 **MR. YOUNG:** Okay. Okay. So does anyone else want
7 to make a comment to Staff, to make sure?

8 **DR. HUNTER:** I think my mind is and very clear
9 about it, much clearer this hour. I'm looking forward
10 to the analysis.

11 **MR. YOUNG:** Just to be clear, we are going to
12 reconvene at this site at 10:30. I know that no
13 earlier than 10:30.

14 Okay. All right.
15 (HEARING WAS ADJOURNED AT 9:30 P.M.)

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Page 387

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF VENTURA)
3

4 I, FRANCES M. GARRITY, Certified Shorthand
5 Reporter No. 8934, in the State of California, duly
6 empowered to administer oaths, certify:
7 That said Hearing was taken before me at the
8 time and place therein set forth and was taken down
9 by me in shorthand and thereafter transcribed under my
10 direction and supervision, and I hereby certify that
11 the foregoing Hearing is a full, true, and correct
12 transcript of my shorthand notes so taken.

13 I further certify that I am neither counsel for
14 nor related to any party to said action nor in
15 anywise interested in the outcome thereof.

16 IN WITNESS WHEREOF, I have hereunto subscribed
17 my name this ____ day of _____, 2012.
18
19
20

FRANCES M. GARRITY
Certified Shorthand Reporter No. 8934

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24
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Page 388

A6028BD
PANEL HEARING MARCH 14, 2012

<p style="text-align: center;">A</p> <p>abandon 377:24 abandonment 54:10 abatement 14:14 149:18 153:11 Abby 3:21 132:17 Abigail 320:7 abilities 356:20 ability 90:14 111:18 136:17 167:8 183:17 233:23 235:20 250:20 298:2 able 12:2 57:8 75:2 76:7 87:1,23 91:3 95:1 98:12,12 120:1,7,17 121:2 129:9 132:1,11 136:8 140:13 154:23 156:3 157:7 167:12 192:10 206:9 219:2 221:19 232:6 239:6 240:11 247:9 269:24 282:4 302:10 311:6 329:16 338:4 357:24 371:22,24 380:5,11 387:4 absence 243:14 absent 208:21 243:18 absolute 151:21 175:18 absolutely 126:3 133:15 144:18 155:21 159:9 160:17,18 169:14 170:15 182:3 193:15 215:15 251:6 343:10 346:14 351:10 361:2 absolutes 76:23 absorb 338:6 abuse 205:25 287:4 academic 215:9 accept 11:14,24 148:21 164:24 307:4 acceptability 346:25 acceptable 57:20 305:19 345:13 accepting 116:8 access 231:7 234:4 293:14 301:9 325:14 accessibility 87:13 accessible 286:6 322:1 331:8 accommodate 14:13 accommodated 347:16 accomplish 27:21,21 150:7 198:24 224:17 224:18 226:9 234:1 303:8,14 accomplishment 8:4 9:16 account 360:18 accountability 34:14 157:4 167:18 168:19 277:24 278:14 279:24 305:14 accountable 33:11 35:5 84:1 224:16 359:20 accounting 347:14 361:13,14 accounts 38:4 accurate 16:21 126:4 157:9 198:23 340:5 accused 196:3 achievable 39:10 96:19 109:4 112:23 303:13 303:23,25 335:23</p>	<p>349:13 achieve 32:8 39:15 55:14 65:1,11,17 85:25 87:2 140:12 141:21 174:12 194:1 224:14 231:1,1 296:5 296:12 305:2 310:3 338:5 339:17 349:5 350:24 360:24 achieved 234:19 296:9 341:17,19 achievements 139:20 achieves 31:21 114:22 achieving 32:5 112:12 acknowledge 49:9 174:4 195:18 acknowledged 32:1 198:12 acquired 308:3 acre 25:21 27:2,2 111:9 213:2 334:14 343:13 345:17 380:22 acreage 8:21 56:20,21 56:25 111:6 126:14 218:13 340:14 acreages 125:19,23 acres 52:18 53:5,14 56:25 60:7 106:18,20 107:1,2 110:25 125:17 137:7 218:21 229:7 230:14 310:13 337:19 340:3 368:17 369:5,6 369:16,23 370:6 381:12,14 383:13 act 30:24 71:1,22 108:12 124:1 273:2 acting 27:6 72:13 253:24 action 14:10 23:3 25:8 25:14 26:2 56:8 63:21 64:1,21 66:15 67:3 68:24 69:3 72:10 211:9 244:12,17 251:4 254:3 283:17,24 284:25 285:7 288:1 301:7,17 323:10 329:4 388:14 actionable 348:22 actions 24:10 29:21 32:4 32:5,11 63:22 72:13 171:25 183:17,18 187:23 232:4,10,11,22 233:14 242:4 actively 134:19 activities 34:20,21 78:22 130:10 152:5 259:23 activity 130:12 209:20 actors 114:16 acts 25:10 actual 30:15 34:22 80:18 130:7 135:21 142:10 142:12 155:15 172:9 210:20 212:5 347:3 354:2 382:9 acute 292:2 ADA 176:5 adapt 61:25 adaptability 329:12 adapting 33:11 adaptive 193:17 233:16 254:10 add 12:12 13:24 30:24 131:1 166:17 183:24 200:5,15,16 204:19 247:24 259:21 268:19</p>	<p>292:5 added 108:11 177:17 251:13,14 adding 31:2 54:12 addition 8:10 29:11 35:10 47:18 51:17,24 52:19 54:11 57:16 78:12 126:16 133:23 169:17,18 170:8 200:3 366:21 378:13 additional 14:19 23:1 30:7 35:20 37:9 75:11 84:11 93:6 136:1 143:1 156:9 158:7,11 160:8 162:17 192:2 202:22 230:23 232:25 237:8 239:15 279:6,9 279:16 281:22 373:15 Additionally 134:12 139:17,25 304:15 additions 171:9 address 28:23 36:17,22 39:5 51:9,15 54:8 56:1 62:5 69:7,16 70:25 91:13 92:21 93:10 94:16,23 95:11 101:7 101:25 102:7 108:8 115:18 142:12 150:8 151:13 156:16 182:12 194:13 208:7 210:7 219:23,25 220:1 230:1 233:10,21,24 234:3,20 235:16,23 236:12 252:8 260:17 283:21 285:25 288:22 323:7 330:6 331:15 333:9 334:4 344:14,15 375:17 addressed 29:10 69:1 93:7 99:17 101:11 114:15 141:10 157:15 237:15 272:7 291:24 357:19 addresses 96:6 274:5 addressing 91:13 151:8 233:8 310:2 313:24 adequacy 186:9 289:2 adequate 165:2 201:12 202:13 287:24 adequately 35:15 37:17 114:13 214:15 adjacent 55:15 61:15 ADJURNED 387:15 adjudicated 316:19 adjudicative 269:3 adjust 65:15 192:10,19 adjusted 32:6 adjustments 153:22,23 administer 167:1 202:17 388:6 administering 201:16 administrative 18:10,15 63:18,21 130:9 131:7 200:17 admit 85:19 226:14 admittance 134:17 admitted 307:25 adopt 11:13 143:8 147:21 154:18 177:12 178:23 231:10 239:11 249:24 254:8 297:17 312:4 323:18 364:6 378:12 adopted 31:9 32:12,18</p>	<p>32:24 33:13 53:17 54:2 64:20 67:1 68:18 69:11 82:11 105:22 124:10 143:13,17,24 235:18 250:3 256:5 336:5 adopting 180:18 232:20 adoption 10:16 18:13 23:4 29:14 37:5 70:11 102:19 110:6 114:9 297:2 333:8 advance 11:19 159:9 162:12 advances 104:23 advancing 8:12 advantage 98:20 385:1 advice 84:6 advised 311:25 advisor 168:7 208:14 356:8 367:17 advisors 111:22 345:3 advisory 160:25 161:1 168:8,13,16 182:18 355:17 356:22,24 advocate 294:23 320:11 advocates 96:8 Aerovista 283:20 Affairs 315:3 363:22 affect 122:6 315:17 afford 43:21 80:4 299:8 299:8 affordable 101:3 248:5,8 286:6 309:2 331:7 affording 358:2 Afisha 21:22 afternoon 62:22 63:12 102:8 107:5,10 132:16 228:23 241:1 284:3,21 285:1 293:12 304:6 318:7 323:25 ag 10:3 13:20 14:3,6 17:20 24:13 34:1 35:3 35:4 67:17,19 68:1,2 68:17 74:9 79:21,23 83:16 87:5,8 93:11 98:4,5,7 105:14,15 107:11,12 108:12 110:5,11 111:20 112:15 117:3 119:15 120:5,6,21,21,24 121:23 122:1 127:3,3 127:13,14 129:8,15 130:3 133:1,21 145:10 145:12,23 146:25 147:11,21,25 153:19 153:23,25 154:18 162:8 168:16 175:25 178:17,23 179:1,23 185:5 188:5 191:12,13 191:16,16,24 192:20 192:21 196:9 197:14 201:14,16 203:10,18 203:20,23 204:10,23 208:2,11 216:10 217:18 222:20 223:22 227:1 231:9 234:15,17 242:15 244:18 245:4 252:23 254:19 255:3 259:8,16 271:8 273:17 275:14 284:1 289:9 295:11 296:13 303:14 303:17 304:17 305:7 305:12 308:23 310:9 311:1,3 312:25 316:2</p>	<p>317:10,22 332:5 333:16 334:23 351:14 352:1,11 353:5 354:2 354:6,11 355:6 356:13 362:13 363:6 364:5 366:21,22 375:11,13 375:18 379:24 380:4,8 agencies 30:22 32:16 35:22 39:4,4 78:23 229:5 231:4 238:17 258:6 262:23 276:15 318:18 agency 36:5 70:24 168:17 258:16 259:4,6 259:14 316:18 Agenda 9:20 283:21 aggregate 98:10,18 211:19 289:15 359:18 aggregated 34:9 98:6 279:19 280:6 aggregating 289:13 aggressive 169:2 179:2 179:20 ago 40:9 49:10 81:19 86:11 102:22 105:20 105:20 162:14,14,16 215:21 225:22 236:7 261:11 264:14 287:22 317:20 361:22 369:15 agree 20:6 21:1 83:9,11 86:13 97:24 112:22 123:18 134:11 135:12 136:20 142:18 184:10 202:24 240:3,7 251:10 252:15 256:17 259:13 263:16 272:22 279:11 280:3,24 288:4 289:8 326:17 335:15,22 337:9 343:17 356:19 359:21 365:11,24 372:24 agreed 134:3 264:15 266:6 288:6 347:6 363:12 agreeing 240:5 agreement 109:25 167:19 305:10 agreements 233:19 agrees 174:21 344:20 Agri 225:24 229:3 239:5 Agribusiness 238:3,4 238:25 239:10 agricultural 3:12 8:17 8:21 9:2,21 17:13 26:21 28:4,11,17 29:10 30:1,4,11,13 31:7 32:23 33:1 36:22 37:5,18 38:5,13,20 39:16 40:8 43:6,23 44:6,11,20 45:3 46:20 52:4 66:9 69:8 93:16 98:3 102:17,20 103:10 104:5,16,21 107:11,18 108:9 109:16 110:23 111:4,13,17 112:17,19 113:9 114:20,24 133:4 133:11,12 134:9 212:17 215:6,25 217:3 229:18 232:9 238:4 239:12,25 241:17 246:12 262:3 271:7 272:17 296:14 301:13 315:13 324:8 325:23 333:8 348:14 360:16</p>
--	--	--	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>373:22 agriculture 8:11 10:4 18:19 29:13 32:16 35:11 42:14,17 46:25 48:22 51:2,11 54:12 74:11,12,21 79:9,18 80:4,8 86:19 88:7,9,21 95:23,25 96:2,22 100:14 103:4,11,18 104:20 106:24 107:16 107:22 112:1 114:7 115:6 122:3 133:19 134:6,20 175:21 193:25 204:17 224:21 225:13 227:6 234:12 238:7 239:16,16,18 240:9 243:16 249:11 251:10 257:15 262:5 267:15 271:10 286:10 293:15 296:23 302:17 319:22,25,25 321:3 333:6 336:19 352:19 352:20,20,22 356:18 363:21 366:3 375:23 agriculturalists 133:21 323:4 agriculturist 199:8 200:18 202:20 agriculturists 205:3,11 318:18 agronomic 215:5 242:18 Ags 364:11 Ag's 84:13 ahead 10:13 16:25 22:24 97:10 99:13 132:3,15 150:20 151:5 157:5,19 158:6,6,13 187:21 191:2 228:22 240:24 261:16 268:22 275:24 276:6,21 285:23 298:20 300:24 311:12 320:9 337:17 360:20 air 90:17 320:17 331:12 Aldo 286:25 Alejandro 21:22 Alejo 92:24 93:20 239:23 Alejo's 97:23 366:6 algae 206:23 Ali 4:7 163:7 277:9 285:20 287:11,13,15 287:17 289:7 290:8 Allan 195:3 Allen 159:4 196:21,22 alli 22:16 Alliance 315:4 325:10 allied 294:23 allies 331:21 allocate 12:2 14:18 115:21 233:17 allocated 30:6 67:14 68:6 72:21 202:17 allocating 204:19 allow 11:16,17 14:24 15:2,7 61:23 109:1 138:24 139:19 148:25 158:19 174:19 175:8 177:17,25 183:3 205:16,17 253:5 265:15 304:11 319:10 338:2 allowable 64:9 162:4 allowance 162:17 allowed 11:18 88:3</p>	<p>113:15 134:17 142:6 150:24 157:6 208:5 276:21 306:19 314:20 allowing 17:9 18:18 92:21 240:14 244:25 335:3 allows 33:22 57:25 85:3 96:7,17 177:25 185:1 198:23 275:3,10 276:19 304:13 332:7 alluding 265:22 almonds 79:25 alter 255:21 alteration 152:10 alternate 162:20,23 alternative 35:10,18 57:13,14 98:5 103:12 105:14 113:11 129:7 129:10 130:21 133:11 133:12 145:13 147:21 147:25 153:19,23 154:1,7,13,18 160:17 164:14 177:18 178:5 178:18,24 179:1,23 180:19 190:9 191:13 191:17,24 192:20,22 196:11,12 208:12 223:23 227:14 239:12 239:13,14 240:1,9 246:20 254:19 263:17 273:17 296:13 310:10 311:3 312:25 316:2 328:6 334:23 335:3,6 352:1,11 353:5 354:3 354:6 355:6 366:22 371:18 alternatives 57:17 58:9 150:19 202:3 347:22 altogether 29:2 amazing 246:6 ambient 30:20 225:25 230:19 amended 185:7 amending 85:16 amendments 69:14,18 America 74:13 American 286:25 292:18 Americans 79:14 ammonia 25:1 amount 12:2 56:24 64:17 68:5 74:20 120:4 128:17 165:2 201:17 204:9 213:19 219:13 222:15 231:25 308:13 312:19,23 345:9,21 352:18 365:19 368:8 373:11 ample 323:2 Amy 4:11 300:8,10 analogous 204:19 analogy 199:23 202:8 221:3 365:8,10 analyses 129:6 analysis 129:14 214:18 216:9,20 217:6,8 258:3 273:17 289:8 294:3 306:25 314:6 336:16 367:21 387:10 analyst 310:19 376:12 376:15 analytical 143:4 analyze 308:1 analyzed 110:6 ands 382:14 383:5</p>	<p>Andy 4:11 300:8 302:14 and/or 8:14 43:21 Angela 3:12,18 27:11 50:6,22,25 animal 26:8 animals 44:22 110:2 271:15,18 announcement 12:1 22:12,14 annual 34:6 35:1 53:23 54:12,14,25 55:1 141:21 172:11 316:21 324:20 347:9 361:1 363:3 annually 65:8 338:22 362:1 anomalies 352:24 anonymous 207:21 answer 16:3 19:2 64:23 85:5 98:24 99:14 110:24 117:13 178:19 190:6 201:12 225:6 228:3 258:17 285:10 289:7 318:21 354:9 359:5 375:4,5 376:5 answered 101:21 339:6 375:15 answers 225:6 228:1 257:13 376:4 anthem 214:23 Anthony 107:7 115:8 anticipate 218:13 antiquated 377:24 anybody 174:23 185:22 190:20,24 193:23 353:2 378:4 anymore 216:8 anyway 27:20 173:9 anywise 388:15 apart 366:3,4 apologies 177:14 apologize 154:16 159:8 206:2 356:9 373:4 apparent 53:1 apparently 105:13 262:23 appealed 195:25 appear 83:17 84:12 130:7 appeared 149:17 161:15 appears 19:13 36:19 103:13 177:15 236:9 265:6 Appendix 42:1 45:8 191:9 applause 9:17 apple 272:19 273:9,11 apples 131:6 189:22,22 189:25,25 259:20,20 Applicability 179:10 applicable 139:1 149:11 225:9 application 39:9,14 130:16 167:2 168:23 176:17 179:5 253:4,5 368:20,24 369:12,21 370:3,24 applications 253:2 368:5,24 applied 58:10 147:10 188:7,22 253:12 343:3 344:25 345:7 360:8 applies 33:1 383:9 apply 32:1 96:10 140:6 147:6,13,16 154:1,3</p>	<p>268:20 269:3 294:3 297:10 341:10,11,22 343:8,13,16 345:12 346:2,8 349:19 361:18 384:20 applying 85:21,22 253:9 279:3 345:21 363:4,12 appointed 12:7,20 92:13 appointments 12:25 apportionment 30:8 appreciate 7:16 15:4 17:6 22:8 89:16,17,18 92:12,22 95:20 96:21 108:19 109:2 112:20 194:23 294:20,21 300:12 304:8 315:18 323:15 324:24 370:20 appreciating 222:18 appreciation 271:20 approach 73:18 96:4,6 96:12,17,21 99:23 100:9 112:15 180:16 180:17 188:1 191:23 203:12 209:3 217:23 224:19 233:8 235:22 264:10 280:24 293:4 293:17 294:2,4,4 304:19,22 305:8 308:25 316:5 318:13 335:4 339:15 345:4 357:10,24 358:17 approached 188:19 approaches 33:3,6,7 166:21 196:12 233:15 approaching 44:16 135:10 appropriate 10:10 36:13 61:20 124:9,9,12,15 124:16 138:25 144:24 145:12 163:9,13 164:10 168:18 169:13 173:25 176:6 188:12 231:8 237:2 274:2,3 277:4,18 312:18,21 332:2 341:24 351:14 355:23 356:3,8 359:17 appropriately 355:19,21 357:18 Appropriations 74:9 approval 167:3 169:16 177:23 196:9 approve 83:9 161:3 168:22 173:1 353:8,17 374:7,9 approved 31:19 36:10 36:12 93:19 120:6 127:4 169:6 178:3 180:16 275:4 304:13 304:17 305:3 326:19 353:11 approving 161:4 179:5 354:2 approximate 283:25 approximately 37:25 59:24 60:16 111:9,22 120:22 128:19 213:3 230:14 236:7 314:23 April 81:13 110:12 291:20 APs 214:22 apt 258:1 Aquafur 317:14 Aquarium 49:15 aquatic 48:15,16 50:3</p>	<p>57:11 152:3,6,8,11 154:22 272:20 Aquifer 317:18 aquifers 38:10 Araujo 4:19 323:24 328:23,24,24,25 329:1 330:14 arbitrary 135:22 264:16 area 47:21,25,25 48:4,7 48:24 51:21 52:15 53:1 58:7,19 59:8 70:16 87:8 91:7 94:1 122:17 123:3 155:13 182:17 187:7 188:18 204:15 231:21 252:14 252:14 256:25 257:11 258:20 264:8 329:23 337:24 349:14 351:7 359:18 369:23 370:4,6 370:9 areas 24:11,18 25:3,6 26:23,24 31:7 38:3,23 39:17 40:3 42:13 43:6 43:8,24 44:11,11,21 46:8,17,20,21 47:3 49:22 51:18 55:5 59:4 59:5,17 62:7 91:6 119:8 121:25 122:4,9 130:18 138:4,11 186:7 186:8 190:3,7 212:14 214:13 215:5 231:7,20 236:11,12 237:16 249:14 262:4 263:3,4 263:7 291:22 302:24 303:23 308:9 311:17 317:10 336:19,20 346:5 364:8 370:5 383:12 arguably 133:25 argue 84:5 104:13 201:21 argues 333:7 arguing 71:11 argument 225:18 319:16 359:14 378:1 arguments 225:13,14 arithmetic 259:17 arrange 127:25 arranged 109:5 arrangement 130:10 370:12 arrangements 253:14 arresting 89:9 arrive 11:12 arrow 125:6 arrows 263:21,22 arsenic 328:4 art 350:20 aside 260:25 261:2,3 asked 16:1 22:5 103:22 108:21 155:23 188:19 197:7 201:11 228:19 244:22 281:22 347:23 369:3 asking 40:20 41:21 73:15 99:7 251:4 267:5 297:21 312:21 318:19 333:23 334:11 348:24 353:24 354:3 372:15 380:7 aspect 20:17 aspects 20:19 294:18 ASPS 275:16 Assembly 74:18</p>
---	---	---	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>Assemblyman 92:24 93:20 366:6 assess 235:21 assessing 127:12 assessment 78:20 195:13 208:15 215:7 assign 274:4,7 277:4 279:24 assist 113:1 255:1 342:24 assistance 8:18,19 21:19,25 33:5 34:11 101:18 127:11 Assistant 3:11 7:5 68:12 107:23 258:15 Assistants 298:23 associated 42:24 44:3 108:20 109:8 119:9 151:23 161:18 202:25 210:9 212:8 229:15 232:25 244:17 association 110:19 126:12 132:18,22 197:7,8 238:5 307:6 309:11 315:22 380:3 380:21 associations 99:19 366:9 assume 155:6 273:15 assumed 292:6 assumes 79:13 assuming 179:11 assumption 214:7,10 335:25 assumptions 209:1 214:9 assurance 232:4 305:20 assurances 112:9 assure 90:13 167:17 201:18 202:18 204:22 assuring 204:8 astounds 327:23 ATKINSON-BAKER 1:21 atras 22:16 atrocious 261:20 Attachment 64:24 138:12 139:18,18,21 139:22,22 142:25 143:1,9,10,11 145:11 146:14,25 147:1 160:2 160:5,23,24 161:6 165:13 169:7 attack 269:25 attain 181:1 attainable 220:9 attaining 103:23 attempted 130:14 attempting 198:5 attend 324:20 attended 318:23 366:11 attending 107:25 286:24 attention 96:24 206:6 207:15 357:14 358:3 attitude 319:7 attorney 254:18 287:17 298:22 324:2,9 attribute 370:10 attributed 98:8 at-risk 43:19 276:8 audible 169:10 audience 154:17 190:21 291:11 audio 12:18 13:5 108:2</p>	<p>audit 34:10 160:16 168:11 169:12,14 171:10,24 174:10 221:9,9,16,21 222:2,6 222:9 305:9 auditable 168:9 211:5 audited 34:8 156:6 160:20 169:12 171:15 171:16 211:10 auditing 171:12,12 222:12 354:22 auditor 171:22 audits 34:9 127:10 130:12 160:22 179:13 179:14 224:8 225:5,5 225:7 304:19 316:3 337:2 August 20:4 40:13,15 41:6,24 42:12 297:1,5 auspice 144:22 author 306:20 authorities 31:13 36:14 36:17 authority 65:20 70:25 153:9 185:23 authorize 333:16 authorized 148:21 authorizes 184:2 255:19 authors 191:5 automatically 68:1 152:25 availability 22:13 178:6 201:11 available 7:10,12 11:24 19:22 21:20,24 22:21 30:10 39:8,11 40:17 40:22 41:2,3,5,7,8 45:10,12 58:2 66:23 67:12,16 72:20 96:15 112:25 174:20 201:19 226:23 259:14 289:11 334:8 336:25 337:1,2 337:2,4 352:19 385:4 avalanche 215:3 avenue 65:22 avenues 234:16 average 212:2 336:4 340:2 349:11,12,14,15 averaging 49:6 369:6 avert 270:16 Avocado 56:11 avocados 44:13 avoid 12:4 141:2 196:7 199:23 265:13 287:8 award 242:11 awarded 8:4 Awards 8:4 aware 43:21 90:2 91:17 92:5 321:12 367:20 awareness 109:15 315:16 awesome 92:14 377:20 377:20 awful 90:22 awkward 226:2 A-r-a-u-j-o 329:1 a.m 2:20 A6028BD 1:25</p> <hr/> <p style="text-align: center;">B</p> <p>b 118:6 138:16 145:11 145:21,22 146:13,14 146:14,22,25 147:1 156:23,25 160:2,5,6</p>	<p>160:23,24 161:6 162:2 165:13 169:7 baby's 331:24 back 11:24 12:19 21:3 21:19,22,23 73:9,13 75:17 77:5 81:14 83:14 85:16 94:5,6,14 115:19,23 125:17 144:19 159:16 163:11 172:24 181:6 187:8 196:20 207:17 213:20 217:8 222:13 223:21 223:21 226:8 228:12 243:9 244:10 256:20 261:9,10 262:6 272:10 272:14 273:8 274:17 274:21 276:2 278:2 280:21 284:1,22 291:25 292:1,19 302:22 311:7 312:16 323:19 331:4 338:15 338:15 339:10 349:8 354:17 355:3 358:25 361:20 369:18 374:20 376:25 377:21 379:6 backflow 54:9 background 29:12 40:3 125:11 195:16 207:8 261:5 bad 212:4,5 246:24 249:9 261:18,18,21 262:13 301:16 302:10 365:4 bag 82:25 balance 55:14 80:5 90:9 179:16 200:24 341:13 343:2 344:24 345:6 347:15 358:17 360:6 360:25 362:11 balanced 56:16 balancing 181:5,8,9,11 ball 193:23 288:3 ballistic 25:23 balls 270:3 bar 84:7 220:5,6 251:2 Barbara 132:22 240:15 300:22 301:2 302:17 309:11 363:23 Barbeau 3:22 14:5 190:23 191:2,3,3,5,11 Barbeau's 264:22 Barricarte 9:6 342:22 barrier 94:24,24 254:25 barriers 292:14 bars 322:16 Barsney 238:12,13 base 39:25 40:8 42:17 44:12 120:16,16 126:20 185:8 208:21 304:21 310:23,24 316:23 based 36:11,20 51:14 52:6,9 57:1 59:13 60:18 61:21 62:5 65:15 101:18 106:2,17 111:11 117:20 126:5 126:10 135:17 144:15 148:3 176:7 195:9 208:15 209:1 215:8 239:13 265:2 295:19 310:5 316:10 324:3 345:12 347:7,18 355:21 baselines 280:11</p>	<p>basic 69:13,14,17 149:12 182:1 286:6,17 325:3 basically 27:16 121:22 148:21 151:19 153:8 166:2 167:2 168:2 169:6 174:8 175:16,25 176:17 177:16,24 183:21 187:2 202:16 212:7 222:9 249:1,4 251:4,9 259:15 271:23 273:7,18,21 275:13 277:17 279:9 292:11 309:16 316:4 347:10 349:11 354:18 368:25 basin 25:11 42:12 74:15 137:23,23 138:5 143:17,23,24 208:19 213:12 316:19 317:13 317:18 basins 38:9 366:9,13 basis 98:20 190:2 225:8 277:7 292:17 294:14 324:20 327:11 356:1 386:21,21 battle 299:5 Bay 36:4 49:15 74:16 191:5 206:16 229:5 230:4 242:12 250:20 304:7 305:10 317:6,13 317:18 348:15 375:7 375:22 beach 47:21 beans 88:14 bear 302:2 367:23 bearing 326:11 began 134:12 242:6,6 beginning 68:9 112:9 179:13 241:23 244:2 302:22 338:1 379:10 begins 18:13 behalf 2:18 91:23 133:5 238:8 241:17 296:22 300:21 309:10 356:13 377:3 behoove 204:18 belabor 209:7 belief 272:14 277:24 believe 7:16,21 17:12 18:17 41:9,10 65:19 73:14 84:17 96:4 105:21 114:4 118:23 125:14,23 134:23 139:23 144:12 155:20 156:23 157:11 159:14 162:19 163:18 167:13 172:17 177:6 178:18 182:16 187:10 190:18 193:14 198:13 201:16 210:3,8 227:21 263:2 263:3 272:6 278:4 286:4 287:3 288:24 289:19 290:20 304:10 323:13 325:2 349:1 356:14 366:14 373:18 375:25 383:17 believes 79:22 belong 99:17 belonging 100:14 Ben 364:25 366:25 beneficial 44:1,5 45:2,2 61:3 96:4 139:2 200:14 261:25 262:4,8 262:18 322:17,21,23</p>	<p>benefit 47:21 69:22 232:5 342:2 benefits 66:18 193:6 231:24 232:12,20,22 233:1 238:5 Benito 74:7 93:1 132:24 Berian 374:25 berries 58:22 59:11 293:24 best 15:21 67:6,10 85:7 101:2 103:24 115:17 126:21 134:24 192:10 196:8 204:1 227:3 233:22 245:1 250:13 254:15 260:23 265:12 289:12 294:23 309:3 362:18 365:9 better 70:19 83:12 87:21 92:10 113:21 127:23 160:21 162:22 170:20 176:6 181:23 198:11 212:10 213:10 216:23 216:25 234:12 241:12 266:24 285:9 287:16 306:6 314:2 316:3 326:20 344:16 371:23 372:1,7 377:25 beyond 156:14 255:18 312:22,24 366:1 bid 224:25 big 74:14 79:15,20 80:2 91:6 99:18 137:9 170:21 177:13 192:17 201:5 202:6 223:20 252:10 263:4 271:19 319:4 334:2 348:7 362:12 380:16 bigger 8:6 94:21,25 biggest 93:22 94:10 223:21 275:18 289:10 bill 3:20 4:14 105:8 107:6 226:21 309:7 311:11,13 378:21 billion 82:23 238:21 315:10 billions 204:16 bioassessment 206:22 biological 49:24 biologist 155:14 biostimulation 143:16 biostimulatory 351:2 bit 15:18 23:14,22 26:19 29:12 63:9,14 93:23 95:17 116:11 118:7 133:14 142:13 148:23 157:23 161:2 200:10 203:20 206:11 207:17 209:9 214:5 224:13 229:12 241:6 255:10 259:6 263:7 266:17 268:23 287:14 333:1 350:19 black 54:1,16 Blakelee 102:5,10 Blakely 239:23 Blakelee 102:12 105:3 blamed 375:24 blaming 317:15 blesses 332:17 blind 291:1 block 370:18 blocks 370:14,15 blooming 261:24 271:16 blow 362:6</p>
--	---	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>blue 28:20 54:9,18 58:17 60:2 61:11 blurring 122:14 blush 159:20 BMP 335:23 336:5 BMPs 92:7 137:25 249:22 295:19 board 1:9 2:10,19 3:3 6:6 7:8,9 8:2,3,6,6,13 8:14 9:4,15 10:22,23 11:2,4,11,12,13,17 12:5,6,7,7,17 13:3,15 14:1 15:12,14,18 16:20 17:18,23 19:4 19:20 20:14 21:7 23:3 23:6 24:9,17,24 25:8 25:13,22,23 26:2,4 28:9,14,19,21 29:14 29:16 30:4,9,9 31:9,20 32:3,8 37:6,24 46:10 50:25 51:4 53:17,18 54:3 61:19,23 62:1,23 63:13,16 64:10,11,12 64:15,15,16,25 65:15 65:20 66:15 67:13 68:12,14,18,22 69:14 69:18 70:8,24 71:2,17 71:17 72:16,17,21 73:19 74:3 75:19,25 81:4,12,14 83:20,20 84:7 86:15 89:5,20 90:17,18,20 91:24 96:17 97:1 102:9,15 103:20 104:8,19 107:5 107:25 108:8,11,12,18 108:25 110:13 111:1 112:18 113:4,11,13,17 113:24 114:8,19 115:18 116:7,14,16 120:6,13 128:1,3,9,15 128:17,20 132:17 136:17 140:1,2 143:8 143:19 146:8 147:20 147:25 148:5,12,12 149:21 150:22 152:20 152:25 154:18 155:1 156:8,17 157:4 161:6 161:10,12 162:1,7 163:12 164:8,9,10,17 164:24 165:25 166:18 166:21 171:2 172:4,9 172:12,15,19 173:23 174:19,20 175:7,12 177:12 178:23 180:6 180:15 181:11 182:2,5 183:4,11,13,16,23 184:3,4,6,14,16,18 185:1,2,20,21,22,25 186:6,9 189:11 195:18 196:1 197:16 198:3 202:8,10,12 204:19 209:12 211:21 219:9 220:23 222:11 224:2 225:16 227:14 229:7 234:15 236:6 238:1,9 238:18 239:11,13,17 239:21 240:2 241:2 242:6,16 244:24 246:10 249:24 253:5 253:11 256:2 258:14 259:4 261:4 262:10 269:2,5 272:10 277:22 279:21 282:11 283:19 285:25 286:23 290:6,9</p>	<p>290:10 291:4 292:11 293:12 299:19 300:13 300:21 301:5 302:25 303:20 304:12,17,24 305:18,20 306:10,23 307:16 312:3,6 315:21 317:24 318:15 320:21 321:14 322:7,19 324:13,14 325:8,12 329:8 330:18 333:3,10 336:3 341:6 345:18 349:17 353:16 360:3 361:9 365:5 374:7 377:3,18 378:10 380:2 386:2,14 Boards 31:11 32:9 62:4 90:19 Board's 8:7,8 24:5 25:5 69:20 70:12 76:8 112:10 143:4,25 169:20 177:21 180:25 293:5 Bob 3:23 4:16 197:4 274:10 317:3 318:5,8 Bobby 219:12 BODAGI 4:15 bodies 300:5 308:25 322:14 384:12 Bodrogi 311:11 315:1,2 315:3 body 53:10 98:16 200:17 321:20 boiling 358:10 boils 27:23 bold 68:9 bomb 380:13 book 121:25 284:20 books 238:18,23 boom 92:9 Borchard 310:25 Boronda 351:6 bottle 205:13 328:7 bottled 43:10 299:8 bottles 117:19 bottom 24:6 42:20 48:13 82:12 129:20 212:5 292:23 343:4 345:8,25 381:18 boulevard 364:14 bound 255:24 256:1 box 103:20 354:18,20,25 boxes 29:1 215:22,23 Boy 13:16 boys 299:23 300:4 Brad 3:22 4:20 191:3 210:13 330:16 332:20 332:21 brag 74:25 Branch 37:2 brand 307:19 break 11:25 22:3,7 63:7 63:9 73:2,5,12 115:16 115:24 194:6 199:12 260:8 282:22 breaking 252:18 breath 246:9 bridge 143:3 brief 23:10 73:6,16 184:22 191:7 194:10 260:9 290:21 325:13 326:24 briefly 46:5 68:5 136:25 144:4 288:22 314:19 Briggs 3:11 6:8,9 7:2,3</p>	<p>7:23,25 9:22,23 10:8 16:9,10,14,19 21:14 21:15,18 22:17 45:21 110:13 201:24 284:16 285:6,11 311:21 340:24 341:6,13,16 342:4,15 385:6 brilliant 181:3 bring 13:1 69:13,18 78:16 82:25 101:8 120:24 183:17 203:20 265:24 266:2 286:5 333:4 343:20 357:23 377:13 bringing 68:22 120:18 120:25 206:23 218:22 266:1 300:17 377:12 brings 100:9 201:10 332:6 BRITAR 5:3 broad 136:13 187:25 broke 159:9 broken 175:21 Bronco 21:22 Brothers 316:15 brought 70:1 83:3 90:7 162:5 164:5 183:18 234:3 245:9,11 333:2 334:3 386:4 brown 4:22 46:21 363:19,20,20 Bruce 3:7 6:16 10:25 11:2 76:1 brunt 302:2 Bruton 374:24 Bucher 300:8 bucks 213:2 223:12 buddy 310:25 budget 202:6 219:1 247:21 380:10 budgeting 370:18 budgets 358:25 buffer 55:17 58:12 60:10 60:17 138:14,15,18,23 139:2 179:19 206:18 206:19 367:4 buffers 109:21,22 295:20 bugs 47:22 build 52:4 53:16 62:10 213:20 building 29:25 92:2 builds 340:16 build-up 75:18 built 88:25 174:18 256:19 bulb 211:3,8 bulk 119:1 bulldozing 262:24 bullet 137:19 138:16 141:25 bullets 221:1 382:13,15 383:4 bump 291:1 346:7 bunch 84:11 217:20 246:7 291:1 379:16 bunny 237:5 burden 324:24 326:12 burdening 332:11 burdens 239:8,15 325:15 Bureau 14:14,18 110:18 133:1 135:4 242:11 290:19 295:7 310:20</p>	<p>332:24 374:3 Bureaus 366:18 buried 358:19 burner 369:19 burning 386:2 business 77:24 87:6 88:2 120:13 193:20 202:9 223:24 232:8,9 232:11 234:11 238:14 302:17 325:18,20,21 325:24 363:22 365:22 businesses 239:4,5 315:7 Buta 374:24 Butar 376:10,11,11 Buton 4:24 364:25 375:2 375:3,10,13,16,20 376:7 buying 119:2 buys 319:16 buzzer 15:6 buzzes 15:2 B-r-o-w-n 363:20 B-u-t-a-r 376:12 B1 167:7</p>	<p style="text-align: center;">C</p> <p>c 3:1 4:1 5:1 138:16 147:12 311:15 Caddis 47:23 Cal 191:4 230:4 238:14 calculated 230:13 calculation 122:6 355:7 355:11 calculations 111:3 367:20 368:1 calculator 218:22 Caldwell 4:11 300:8 302:14,15,15 304:3 California 1:11 2:12,20 6:1 9:1 36:1,2,12 37:2 46:11 69:22 71:9 72:7 79:20,23 80:4 87:9,21 90:16 91:11 110:20 116:1 121:10,11 132:19,21 133:1 135:4 197:11 206:11,16 210:1 212:20 229:6 238:10,15 239:2,4,8 275:21 276:5 290:19 298:22 303:12 315:22 327:20,22 328:20 330:23 331:1,10,13 334:8 335:12 366:17 379:5 388:1,5 California's 36:14 call 6:7,9 7:14 12:11 63:24 86:7,9 94:2 97:3 124:5 145:21 185:11 270:3 281:16 334:23 355:8 363:13 called 90:22 145:10 146:21,24 239:21 276:14,15 280:19 326:25 327:4 calling 27:17 182:17 185:10 264:16 calls 36:13 297:15 CalTrans 24:12 Cal-M 117:21 camp 90:22 256:19 Campbell 4:16 317:3 318:5,7,8 320:6 camps 43:22</p>	<p>cancer 321:11 Cannella 107:7 115:8 125:24 239:23 Cannella's 105:8 125:15 cap 335:23 341:8 342:12 348:3,16,16 capability 77:10 312:24 capable 168:8 209:6 325:3 capacity 29:25 212:13 217:16 222:25 223:1 247:21 293:5 324:21 caption 199:11 capture 172:2 303:24 car 368:13 Card 11:23 115:18,22 194:14,16 228:13 258:12 283:5 cards 7:10,12 11:25 102:5 115:20 116:8 281:25 298:17 care 79:11,13,13 244:15 278:8 283:17,23 career 363:24 careful 259:21 317:11 carefully 287:3 Carl 330:17 carlo 201:4 Carmel 263:5 carpetbagger 257:2 Carr 299:22 carrot 77:14 80:21,24 208:4 335:20 carrots 77:16 86:14 carry 167:9 308:4 cars 331:11 case 22:4 25:18 38:21 48:25 65:21 67:2 77:14 128:10 133:11 143:3 204:17 257:14 362:16 365:24 cases 13:14,16 25:25 26:3,11,20,25 39:12 43:8 47:6 48:10 64:9 66:3,9,11,12,16 72:11 90:1 120:22,22 223:9 257:14 Casterville 311:17 catch 366:13 catchall 175:1 categories 175:22 291:21 366:16 category 106:20,21 111:1 357:20 358:14 cattle 44:23 243:12,18 271:8 378:24 caught 78:13 cause 29:22 174:24 176:2 193:17 294:14 370:10 caused 291:1 313:25 378:3 causes 332:2 causing 36:23 66:19 95:6 208:20 caution 21:7 280:15 cautions 280:14 cautious 200:16 caveat 203:15 279:7 CCA 333:21 334:6,12 CCAM 385:3 CCAs 111:22,24 112:4,5 112:25 367:19 cell 7:17</p>
--	--	--	--	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>center 55:20 287:18 327:8,13 331:21 central 1:9 2:10,18 3:3 6:5 8:21 10:22 14:8 23:22 30:3,5,19,25 31:5 33:23 37:8 38:1 45:22 46:11,19 52:22 58:14 64:25 74:20 75:1,3 87:18 104:24 107:24 110:19 111:23 111:24 112:6 121:11 132:9 134:4,6 168:2 168:3 172:14 180:6 183:15 197:9,14 204:20 209:15 228:24 229:4 230:3,19 235:5 244:18 248:23 249:14 249:25 250:14 251:12 251:20 254:24 256:1 272:9 286:15,15 296:20 300:19 301:4,6 315:19 318:9 320:14 320:25 321:4 323:3 324:5,8,17 325:10 327:9 331:20 336:21 380:2 century 372:3 CEO 202:10 CEQA 20:11 144:6 certain 19:13 44:7,13 55:14 106:19 137:14 142:21 194:12 200:7 237:6 251:7 285:5 290:7 319:18 341:5,9 345:10,16 346:5 362:16 383:1 384:10 384:11 certainly 76:21 127:24 158:25 224:3 302:24 certainty 298:7 certification 10:19 33:24 52:21 61:12,13 67:18 304:14 305:2,9,13,17 305:24 315:19 316:5 334:7,9,11,12 certifications 57:7 certified 52:20 56:9 58:11 61:6 67:25 111:22 199:9 317:7 345:3 367:17 382:17 388:4,21 certify 388:6,10,13 cetera 201:5 202:4 214:23,23 232:19 CFBF 332:25 chain 205:21 308:18 chair 6:5 8:1 10:23,24 23:17 45:14 50:24 62:22 63:13 77:25 107:12 117:2 157:17 165:6 196:22 237:25 238:1 258:14 267:2 282:15 287:13 298:19 306:10 311:14 322:7 325:7 332:22 343:21 365:2,5 367:1 chairing 86:17 Chairman 3:4,5 7:3,22 9:23 10:9 12:14 21:5 37:23 74:2 86:16 93:9 107:5 123:11 132:16 146:3 159:13 164:7 194:5,17 197:19 240:13 241:1 283:9</p>	<p>284:13 302:15 307:18 315:2 330:18 Chairman's 17:8 challenge 293:21 304:10 339:11 348:9 challenges 95:24 challenging 118:21 196:16 290:10 348:20 chance 162:11 252:8 254:18,19 372:1 chances 196:8 change 27:6 45:18 92:4 105:22,22 112:24 125:22 126:8,23 128:15,20 136:16,23 147:22 148:2 149:20 150:1,1 152:14 154:13 166:4 184:20 222:6 234:8 242:19,21 249:6 255:16 263:13 326:23 329:10,10,13,16 330:7 338:22 364:14 378:1 changed 104:1 105:24 125:20 126:7 151:17 157:1 174:7 180:8 340:11 changer 193:16 changes 90:9 95:20 105:16 106:5 128:22 133:9 144:17,17,24 145:3 150:21 151:12 154:24 155:20 156:16 157:12 158:2 159:19 162:9,12 163:8,18 164:4,11,18,20 165:14 170:22 174:3 175:6 176:19 177:10,17 178:4,6,11,13 182:12 185:18 192:11 193:16 199:15 252:15 271:19 292:25 338:23 354:25 357:2 changing 210:18,19 channel 118:19 119:4,9 119:17,22 230:7 252:12 262:20,24 325:20 chaos 95:6 100:5 Chapman 5:3 374:25 377:16,17,17 chapter 292:17 322:8 332:22 chapters 322:8 characteristic 126:11 characteristics 51:14,16 52:10 characterization 186:20 characterize 160:1,4 214:11 characterized 136:13 211:20 340:19 charge 70:21 252:2 charges 302:23 Charles 195:4 197:1 329:11 chart 355:12 chase 299:10 306:11 chasing 362:12 cheaper 247:15 cheapest 246:20 check 103:20 checkbook 83:3 Checklist 53:23 54:15 chemical 40:1,6 42:14</p>	<p>42:23 256:24 292:18 chemicals 56:14 217:3 Chesapeake 74:16 Chief 37:1 child 328:11 children 90:5 chilling 190:13 China 80:2 chips 374:19 376:24 chlorophyll-a 52:14,25 53:9 340:20 383:7 choice 221:22 248:15 296:15 choking 262:17 choose 14:19 65:21 138:25 147:21 323:6 328:13 chooses 175:7 chose 87:19 249:24 372:12 chosen 147:25 Chris 310:25 chunk 245:25 Church 301:2 Cindy 37:1 CIP 242:17 circle 211:15 264:6 369:23 circled 48:11 circulated 18:4 20:23 citation 307:5 cited 78:8 139:23 cites 142:9 cities 116:22 364:2 citing 186:17 320:23 citizen 71:8 307:17 317:6 citizens 30:22 375:25 citrus 44:13 city 13:10 117:19,22,22 275:12 317:14 325:19 363:24 375:8,16,21 claim 103:21 231:14 Clara 93:1 132:24 clarification 10:1 40:21 41:21 123:14 129:4 146:3 147:5 151:19 152:15,16 153:1 290:1 clarifications 161:22 clarified 161:11 184:24 313:13 360:19 364:21 clarifies 110:21 176:17 clarify 10:6 40:10 47:6 66:8 147:12 160:22 183:6 257:24,25 283:16 319:9 342:4,14 351:16 clarifying 361:3 clarity 267:21 Clark 4:4 14:8 228:11,23 228:24 229:11,13 235:12,23 236:12,16 236:24 237:14,22 276:19 277:25 Class 379:25 classifications 169:8 classified 111:6 classify 152:15 198:19 clean 14:9 20:9 30:24 43:21 71:14,14,16 75:25 76:3,5 90:25 91:5 114:4 244:12,17 246:21 247:17 263:5 273:2 286:17 293:15</p>	<p>301:12 318:12 327:18 335:12 339:14 384:14 cleaned 85:23 91:14 cleaner 252:3 331:12 351:5 cleaning 25:17 Cleanup 153:11 clear 12:20,23 32:10 33:8 84:9 129:17 147:10 161:19 217:7 225:11 235:7 255:20 261:6 304:24 305:18 313:9 344:10 382:1 387:8,11 clearer 161:22 387:9 clearly 129:10 141:20 167:6 170:17 180:2,25 Cleary 4:5 14:9 228:11 244:12,13,16 263:16 click 267:5,6 clicker 22:24 clients 19:9 148:10 290:9 298:25 climate 87:22 346:18 clinics 321:7 clock 131:22 159:22 259:1 clogging 262:17 close 11:10 17:15 18:2,8 19:23 40:12,23 41:24 95:14 125:1 131:19 200:20 258:24 299:22 318:5 349:14 closed 20:2,2 303:18,22 385:22 closely 114:7 317:25 closer 58:13 59:5 60:5 377:12 closing 14:13,15 131:20 308:22 Club 106:15 coalition 31:18,19 33:19 96:2,16 133:1,24 166:19 180:16,17 183:4,12,12,22 185:25 186:5 187:2,5,8,13,14 188:2,3 189:10 244:21 245:9 246:3 293:17 302:16,21 304:18,21 305:8 319:8 337:14 348:18 352:21 353:10 356:4,5 357:10 359:17 363:21 coalitions 30:1 33:15,22 127:10 130:25 183:21 185:13 186:21,25 305:1 325:17 coalition's 239:11 coast 1:9 2:10,18 3:3 6:5 8:21 10:22 14:8,10 23:22 30:4,5,19 31:1,5 33:23 37:8 38:1 45:22 46:11,19 52:22 58:14 64:25 74:20 75:1,3 87:18 104:24 107:24 111:23,24 112:6 121:12 134:4,7 197:9 197:14 204:20 209:17 228:25 229:4 230:3,19 235:5 248:23 249:15 250:14 251:12,20 260:13 272:9 286:15 296:20 300:19 301:4,6 315:19 318:9 320:14</p>	<p>320:25 321:5 323:4 324:5,8,17 325:10 336:21 380:2 coastal 36:3 90:17 195:6 195:8,10 229:6,8 322:12 code 34:4,24 62:16 71:8 180:1,2 182:1 199:24 210:2 266:9 273:22,25 277:5 281:9,15,17 288:23 coded 189:21 cold 373:4 collaborate 292:13 collaboration 76:13 83:12 85:19 114:19 172:24 203:14 204:2 260:3 315:17 334:25 collaborations 374:16 376:22 collaborative 96:7 123:17,19 132:20 208:13 219:10 233:6 305:12 330:22 331:15 332:7 collaboratively 112:17 224:18 colleague 205:2 380:3 colleagues 15:17 190:19 collect 217:20 250:7 collected 46:24 47:15 48:8 49:19 119:14 230:19 258:18 376:14 collecting 30:21 213:1 217:19 289:17 collection 78:22 112:2 192:9 317:12,16,17 collectively 106:25 color 189:21 325:16 326:13 colors 212:4 column 349:10,12 combination 230:11,15 357:15,22 combined 46:13 142:4,5 231:1 336:6 346:21 combining 142:4 come 7:20 9:7,9 18:1 25:22 40:18 46:18 64:11,15 73:13,22 74:23 75:2 77:17 89:3 94:6 100:22 115:19 116:23 136:17 140:1 162:8 163:25 167:25 178:2 185:18 194:14 209:20 213:9 223:1 225:12 228:21 237:24 244:14 245:16 259:19 260:18 269:19,20 273:10 275:3 284:22 284:24 285:19 297:19 303:5 307:3 312:15 326:8 348:5 350:22 358:25 375:6 comes 15:2 64:15 85:16 166:15 247:19 271:10 277:9 278:5,7 334:19 341:23 346:9 365:11 365:21 comfort 148:11 coming 12:24 64:10 76:24 82:13,13 89:8 98:11 100:19,21 120:2 130:24 192:17 194:20</p>
--	---	--	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>195:17 196:20 198:1 198:10 207:22 222:13 223:19 235:2 257:18 267:24 331:24 385:15 commencement 256:6 commencing 2:20 comments 56:17 comment 17:15 18:2,9 18:20 19:22 20:7 23:17 29:1,3,4 36:8 37:3 40:13,17,23 41:24 51:5,7,10 53:15 93:23 94:16 105:13 115:12 206:12 265:25 266:3 268:2 290:22 322:11 328:14 330:15 343:21,23 385:21,23 387:7 commented 297:7,8 386:8 commenter 344:22 commenters 14:16 comments 10:6,10 11:14 12:3,6,10 13:13 13:15 14:12,20,22 15:1 19:17,23,24 23:18 29:6,10 35:10 35:12,23 37:13,20 40:19 51:8,17,20 55:4 59:3 62:5 73:19 77:20 92:17 93:5 97:6 99:5 102:24 105:6 106:1 115:15 144:7 164:8,12 195:7,17 196:18 197:10 199:4,16 202:22 203:21 234:24 237:21 240:16 244:9 254:20 258:11 265:5 272:23,25 284:14 287:10 288:11 291:8 293:13 298:9 305:25 308:4 309:5 310:14 311:9 313:16 317:1 318:4 322:3 323:22 325:5 328:22 332:19 333:18 335:8 336:8 337:15 344:20 347:19 360:15 363:17,18 364:23 366:6,24 367:22 374:23 375:17 376:9 377:15 378:19 381:2 commercial 91:6 134:6 325:20 336:19 commission 36:3 56:11 56:15 90:17 132:21 229:6 246:18 335:12 336:4 347:25 Commissioner 188:5 commitment 8:23 9:16 39:3 196:23 371:19 committed 274:11 304:9 305:21 committee 74:9,10 77:7 107:12,16 108:16 112:14 115:5 160:25 161:1 168:7,13 182:19 355:18 356:22,24 committing 204:18 commodities 88:1,10,11 88:12 commodity 57:18 88:20 common 316:9 communicate 240:2</p>	<p>297:24 communication 81:15 95:9 100:18 101:20 125:21 162:17 297:22 communications 93:13 communities 25:22 38:19 43:4,23,25 45:4 70:22 89:25 105:1 134:21 204:3 245:6,21 245:24 246:14 247:8 247:23 248:3,21 250:14 251:3 254:5 301:12,21 302:9 315:16 325:15,16 326:5,6,11 331:2 336:17 377:8 community 17:13 70:18 77:12 82:6 87:5,8 95:6 96:8 98:3 102:23 103:3,10,11,18 104:16 104:21 106:24 112:17 114:20 129:8 134:2,10 162:22 203:20 215:25 245:5,11 247:7 248:12 253:25 257:3,4 259:8 286:2,5,18 294:18,19 296:2,5 301:25 302:11 303:14,18,19 320:11 320:15,16 321:17 324:2,4,15 325:18,23 325:24 327:8,8 331:25 332:3,4,4,10 373:22 374:9,11 375:7 386:8 companies 91:9 219:6,6 308:11 company 202:11 compare 26:3 131:6 191:22 217:22,24 compared 27:7 35:3 94:7 106:19 112:5 178:22 180:12 191:17 348:9 366:1 comparing 129:19 259:19 comparison 178:17,21 189:22 comparisons 133:10 178:15 181:19 compelling 226:4,5 compete 239:6 competing 191:24 competition 88:21,22 239:7 competitive 87:24 371:4 competitors 224:1 371:6 complete 15:1,3 86:20 155:14 166:3 168:10 189:9 192:25 193:7 282:1 completed 206:24 completely 153:17 154:9 180:12 221:18 240:10 380:21 386:16 complex 108:14 109:3 199:24 319:5 351:13 370:19 complexities 108:19 compliance 8:19 54:13 54:14,25 61:20 65:2,4 99:25 108:20 111:8 112:12,24 113:1 130:3 130:24 139:8 140:20 141:11,16 143:23</p>	<p>144:6 148:5,13 149:7 174:12 177:3 182:10 192:6 211:7 232:5 233:2 234:19 255:16 255:25 256:3,10 295:18 305:15 349:1 360:24 361:2 365:20 366:1 complicated 13:20 127:21 128:8 334:20 364:4 370:12 376:2,2 complices 62:16 comply 31:16,17 53:25 54:4 57:21,25 71:22 112:1 137:12 140:6,21 143:2 167:21 173:10 273:21 304:16 complying 65:25 66:13 66:25 140:17 141:4 255:2 component 209:15 229:18,21 231:17 232:8 components 367:12 comprehensive 103:12 133:24 348:13 comprised 315:5 compute 111:5 computers 100:6 conceivably 355:12 concentrated 58:19 121:16 308:9 concentration 40:3 44:19,20 48:13 49:23 concentrations 44:24 47:18 48:5,18 49:5,9 49:12 50:2 251:1 concept 224:17 316:3 345:1 352:21 354:11 concepts 280:4 conceptually 145:1 concern 12:15 83:10,12 90:8 105:25 106:8,24 107:3 108:17,22 125:16,25 148:7 150:6 150:8 151:10 169:20 182:12 188:23 201:10 202:6 325:25 335:17 concerned 47:11 93:4 93:17 95:22 97:12,25 101:23 109:13,19 111:18 125:25 150:7 178:4 205:20 252:24 253:1 307:17 317:6 320:16,24 331:17 333:1 335:25 375:25 concerning 108:7 concerns 56:1 81:15 82:1,3 84:24 89:21 93:14 95:12,19 101:19 103:8 113:2 115:4 129:2 144:5 147:9,9 149:9 151:13 156:17 157:15 161:18 166:12 174:4 178:17 183:21 190:7 233:21 252:23 291:6 373:25 concerted 315:15 conclude 15:10 227:23 284:14 316:7 337:8 concluded 131:5 concludes 37:20 45:5 72:24 115:14 131:10 281:21</p>	<p>conclusion 14:17,20,21 15:24 23:16 62:3 71:19 139:6 140:4 193:13 269:21 270:7 273:10 302:6 317:14 conclusions 104:3 182:22 270:13 317:21 concrete 352:5 concurrently 203:10 condition 37:22 66:17 70:6,7 153:7,13,15 166:9 173:15 344:15 conditional 9:20 29:15 32:25 52:5 53:16,19 54:2,17 62:11 63:15 63:17 65:25 107:20 113:7 163:10 conditions 23:11 34:13 37:16 38:23 39:1 52:7 53:18 54:6 62:18 66:22 69:15,24 140:18 147:6,15 166:8 289:3 289:4 346:18 361:10 conduct 14:25 53:24 60:8 155:17 156:3 186:25 conducted 15:19 34:9 39:23 52:21 129:14 156:4 367:15 conducts 160:21 conference 283:20 confidence 305:23 confident 369:21 confidential 242:8 confines 174:6 conflict 11:3 109:17,23 143:19 216:8 380:5 conflicting 136:11 141:8 295:13 conflicts 110:3,5 210:11 confluence 230:5 378:16 confusing 210:10,16 confusion 125:16 344:6 congratulations 9:17 congregation 301:3 330:22 congregations 300:17 Congress 74:6,8,18 103:6 Congressional 74:7 Congressman 3:19 73:2 73:18 74:1 78:3 80:12 82:19 83:4,4 89:15 91:23 95:15 123:24 239:22 240:10 266:15 272:23 331:17 conjunction 17:19 18:7 connect 187:25 connection 235:11 281:5 conscious 44:25 consequences 32:7 224:14 363:5 consequently 24:1 39:2 339:8 conservation 134:20 294:18 315:25 Conservationist 286:25 consider 10:16 12:6,9 23:4 47:22 48:2,16 66:1 67:21 96:21 113:24 130:22 162:12 165:6 203:2 204:18</p>	<p>293:6 295:1 296:13 308:22 315:8 317:24 320:3 355:25 361:5 considerable 118:25 148:7 150:4 292:4 consideration 70:10 103:9 113:11 115:3 146:9 220:7 321:20 350:9 377:5 considered 53:6 54:20 59:1 107:2 149:25 164:21 292:16 317:10 361:10 considering 66:4 89:23 102:19 148:11 181:2 195:20 254:23 365:23 considers 195:22 consistency 36:11 consistent 34:4 182:1,4 210:22 297:20 340:9 consistently 51:8 constant 208:13 338:18 constantly 338:13 339:4 constituent 190:2,2 constituents 26:1 constitutes 255:16 305:19 Constitution 72:7 construct 141:1 constructed 195:14 230:4,8,12 231:24 construction 24:12,14 229:17 230:23 231:5 231:12,16 232:16 consult 298:4 consumable 253:22 contact 22:5 363:8 contacted 101:24 contacting 385:12,12 contacts 195:16 385:14 385:15 contain 141:7 contained 111:16 113:25 115:7 containment 141:2 contains 39:19 139:7 contaminant 27:3 37:11 contaminants 116:24 384:11 contaminate 25:10 contaminated 26:1 85:23 89:22 90:3,23 301:25 321:13 328:4 329:24 376:3 contaminates 76:2 contamination 37:7 75:14 76:14 78:10 85:13 110:1 251:24 253:8 258:1 301:13 320:17,24 324:6 339:8 contend 152:5 182:3 268:6 content 168:9 265:23 context 19:15 145:23 188:17 215:11 221:12 227:5 346:22 350:20 continual 134:5 continuation 176:13 283:22 continue 34:1 72:1 89:13 104:13,25 124:12 144:5,10 166:6 171:10 173:9 177:3 208:11 223:2 255:3</p>
---	--	--	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>282:7 301:8 323:9,12 333:13 360:21 continued 4:2 5:2 37:7 115:2 189:5 205:23 290:4,6 332:7 continues 33:14 156:4 172:19 257:6 continuing 26:15 216:1 323:11 332:9 continuous 78:20 continuously 62:1 66:6 contract 206:22 216:7 224:25 contradicts 133:8 136:2 contrary 133:20 contrast 209:8 contribute 218:14 314:3 contributed 258:7 contributes 315:9 contributing 29:22 189:3 235:6 contribution 8:11 314:7 323:4 contributions 98:15 contributor 315:13 contributors 323:8 control 1:9 2:10,19 3:3 6:6 7:8 10:22 27:22 29:18 30:9,16 31:8,10 31:21 34:18 37:17 56:12 107:25 137:16 137:18 176:22,24 188:10 204:20 218:10 256:2 259:23 269:4 272:10 279:20 290:10 291:4 336:1 controlling 33:20 150:5 150:16 controls 218:9 conundrum 223:19 225:2 conundrums 364:21 convene 115:23 convened 103:2 107:15 convenient 152:18 conversation 193:9 209:22 248:17 conversations 207:12 207:13 234:14 conversion 232:14 conveyed 112:21 convinced 240:10 convoluted 185:6 convolution 377:4 cook 205:13 cool 220:15 300:15 cooperate 173:19 cooperation 15:4 77:16 85:24 226:13 cooperative 29:13 32:14 40:5 42:22 57:9,10,24 81:8 142:6 145:19 154:12 173:13 177:15 177:19 178:8 194:2,3 200:13 241:16,19 242:15,20 253:14 274:5,6 296:12,22 297:3 311:5 318:17 331:20 345:15 cooperatively 180:5 296:10 309:4 coordinates 330:21 coordinating 8:17 coordination 242:10</p>	<p>345:2 Coordinator 315:4 copies 131:16 158:20,22 158:23 190:19 copper 379:13 copy 102:13 126:21 162:8 190:21,24,25 copyright 211:15 corner 21:23 corps 360:13 correct 20:25 123:7,8 124:1 146:23 236:10 244:1 290:5 314:24 335:13 336:13 343:2 353:18 355:15,16 360:14 362:20 382:16 383:17 388:11 corrective 171:25 correctly 64:13 196:20 330:4 341:23 corridor 151:18 152:1 corridors 236:22 cost 39:13 43:1,14,17 79:16 85:3 88:23 111:8 116:23,24 117:19,24 129:6,15,16 129:21,23 130:6,22,23 130:25 131:2,7,7 191:6,11,15,16 192:5 192:16 193:1 232:3,12 232:13,16,22 234:11 236:13 238:20,24 239:1,2 246:14 247:8 247:13 295:17 302:2 378:9 380:9,11 Costa 4:23 364:24 366:25 367:1,2 368:10 369:6,14 370:1,4,22 371:1,11 372:12,21,24 costly 239:19 308:24 344:21 costs 42:23 43:5 44:3 70:17 129:14,25 130:2 130:8,9,13,14 131:8 191:8 200:15 214:21 232:10,25 233:3,14,18 234:20 248:1,1 295:16 301:22 308:11 321:3,6 380:15 cotton 88:6,13 counsel 3:5 7:7 15:12 83:15 122:22 195:7,8 225:15 290:1 388:13 counsel's 225:18 289:8 count 115:20 361:17 counted 256:4 counter 270:14 counties 75:9 87:7 89:6 92:25 132:23,24 152:10 309:12 363:23 counting 258:5 countries 238:19 country 79:10 209:25 238:24 315:4 counts 361:7 county 74:17 75:20 87:7 89:8 90:16 91:8,10 93:2 110:18 114:24 118:7,9 168:17 188:4 188:5 229:23 242:10 245:25,25 247:5 250:15 258:16 295:7 299:11 302:18 311:2 315:14 324:3 325:23</p>	<p>332:23 333:9 363:23 376:14 381:15 388:2 couple 17:4 77:22 81:13 86:10 121:7 122:1 124:19 151:4 155:4 176:19 182:20 202:22 213:16 214:6 223:15 225:23 261:16 273:18 313:12 364:9,10 386:7 coupled 27:25 course 9:14 25:7 170:13 171:10 176:5 182:13 205:23 249:25 256:19 322:13 380:24 court 1:22 11:6 22:1,5,6 132:13 176:15 196:2 207:23 264:16 307:6 307:10 courtesy 92:20 cover 21:15 67:22 196:23 245:3 247:22 250:4 277:10 covered 107:19 149:21 150:2 183:13 cow 44:25 co-equal 114:23 CPA 199:25 CPAs 85:1 crafted 34:3 crazy 276:14 380:1 create 150:23 169:10 181:22 208:13 212:12 215:3 219:10 221:12 227:11 233:11 234:4 236:21 301:21 348:22 created 11:6 89:5,5 100:4 105:19 110:4 120:24 209:21,23 219:1 308:24 333:10 367:12 creates 101:6 273:19 349:24 creating 221:9 316:9 creation 109:20 231:8 332:17 creative 225:1 332:7 creativity 227:9,10,12 296:1 335:2,2 359:16 credible 167:11 190:9 292:16 credit 233:13 283:15 creditability 307:2 creek 55:16 207:20 229:8 230:14 241:19 242:13 243:1,4,12,15 243:24 299:24,24 379:21 380:16,25 381:14,15 384:6,13,14 criteria 53:8,12 105:25 106:1 155:24,25 167:4 198:21 221:18 222:2 222:12 309:17 337:1 382:1,2,11 383:6,8 critical 35:15 104:16 113:18 207:7 232:8 305:22 criticism 182:9 201:19 291:3 292:6 crop 53:3 58:5,20,23 67:22 88:4,16 111:22 141:21 294:10 299:10 315:13 333:21 338:9 338:14,23 339:5,9,9 343:3,4,8,16 344:25</p>	<p>345:3,7,9,12,15,18,19 345:22,24 346:4,18 347:10,13 360:8 361:10 363:2,5,10 367:17 368:19,21,25 369:23 381:16 383:1 crops 39:14 44:13,17 52:17 53:13 58:22 59:10,22 79:24 80:2 87:25 88:15 111:11 141:20 193:21 305:5 339:10 341:5 342:1,12 343:12 346:10 360:25 360:25 369:6 384:3 cross 370:14 crosses 243:4 cross-examination 99:7 Cruz 74:6 93:1 195:9 crystal 193:23 CSR 1:24 2:22 CSUMB 230:13 cuarto 22:16 culture 87:5,8 cumulative 87:20 curious 189:19 279:1 369:13 375:22 current 33:21 56:12 112:18 127:14 143:9 147:3,23 148:6 183:3 195:15 202:6 206:4 234:5,15 275:2 340:8 currently 33:1 54:3 126:3 139:25 140:3 143:19,20 144:1 148:14 152:2,16,22 153:21 154:7 175:18 176:10 178:10 182:14 183:6,8,14 202:15 205:7 210:7 235:12 236:17 253:12 254:22 301:21 302:18 324:5 curriculum 203:25 cursor 13:13 curve 298:1 custody 205:21 customer 8:24 cut 20:9 56:13 116:11 263:15 306:11 338:16 Cutman 195:4 cutoff 266:8 cuts 202:7 cycle 92:7 372:19 C-a-l-d-w-e-l-l 302:16 C-h-a-p-m-a-n 377:17 C-l-a-r-k 228:24 C-o-s-t-a 367:2</p>	<p>289:23 291:9 293:10 Darrian 378:22 Darwin 329:11 data 8:9 30:21,23 32:20 36:20 38:10 44:10 45:18 46:13 47:4,14 49:8,15,19 58:2 61:1,2 61:14 70:1 71:20 72:14 78:19,22,24 92:4 112:2 119:7,13 120:16,16 121:21,22 121:23,23,24 122:1,2 122:3,5,7 123:2,3,4,6 124:11 125:9 126:20 172:2 187:23 191:20 192:8,13 200:20,20 201:3 212:1 215:19 216:21 217:19,21 230:19 238:15 242:17 242:18,22 252:12,20 252:21 258:17,20 259:20 267:18 291:22 294:13 295:13 307:24 308:1,2,3 317:20 324:19 332:6 336:15 336:16 349:20 376:14 376:14 database 120:23 248:22 date 195:19 256:4,6 266:8 324:19 dated 110:12 dates 63:20 75:17 daughter 328:3,4 Dave 195:13 David 4:23 364:24 366:25 367:2 Davis 75:23 78:15 91:19 306:12 307:1 day 31:5 82:17 92:22 97:4 136:22 165:5 291:2 299:13 300:4 313:11 326:19 328:5,9 380:17 388:17 Dayman 320:7 days 93:24 162:14,16 166:2 168:22,24 171:4 179:3,11 196:10 261:16 308:17 368:15 de 126:25 196:11 255:16 293:6 deadlines 203:2,3,7 deal 11:15 26:6 68:20 85:12 95:1 158:11 192:15 225:1 240:7 258:17 263:17 310:23 332:1,3 339:14 dealing 42:24 44:4 72:3 152:1 156:21 198:3 294:5 327:17 344:5 377:7 deals 359:12 dealt 118:18 363:25 Dean 238:13 debate 361:15 decades 38:24 40:9 78:6 92:2 198:12 249:11 259:13 decide 175:9 177:12 217:5 decided 81:21 128:20 197:15 207:20 261:3 decides 180:10 364:13 deciding 301:19 decision 11:12 28:14</p>
--	--	---	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>82:10 93:11 97:1 108:25 113:23 143:5 196:16 264:14 269:16 286:9 288:11 293:7 312:3,24 326:16 328:17 decisions 70:12 89:21 94:9 114:2 264:10 329:18 Declaration 20:12,16 decrease 64:17 decreases 50:1 dedicated 212:24 332:14 dedicating 90:21 deemed 123:16 deep 246:9 deeper 246:19 247:13 247:25 defects 251:16 defense 67:6,10 287:18 defensible 37:16 defer 97:10 262:23 356:7 deferring 143:25 deficiencies 291:21,23 291:25 362:24 define 305:19 346:17 defined 167:15,16 346:20 definite 192:6 definitely 20:21 26:1 93:3 102:1 190:3 354:13 384:15 definition 136:10 325:11 367:7 degradation 71:5,19 124:2 202:23 degrading 272:5 degree 26:9,14,16 27:10 27:12,13 84:4 204:11 degreed 205:19 delay 69:4 72:1,10,12,12 72:15,20 104:19 272:4 272:5 326:15 333:11 333:13 delayed 326:15 delays 255:7 287:8 delegate 224:12 delete 153:6 184:17,24 deleted 153:14 155:4 deleting 143:22 176:20 177:4 deletion 149:15 155:3 Delgado 3:7 6:16,17 10:9,13,14,25 13:9,23 16:23 21:5,7,11 45:14 73:6 76:1 77:21,22 78:1,5 80:12,22,25 81:10 82:1,18 97:7,12 97:22 99:2,9 101:12 105:9,12 106:4,8,12 117:2,9,12 125:13,14 126:24 127:15 128:7 128:12,23 162:3 163:4 164:8 276:25 277:1,9 278:19,24 281:14,18 314:17,19,25 342:18 351:24 360:6,10,12 361:3,20 362:9 363:1 363:11 370:2,20,23 371:2 372:8,14,22,25 378:24 381:3,10 382:6 382:10,13,19 383:2,4</p>	<p>383:10 deliberate 11:12 12:10 deliberately 260:25 deliberation 11:17 164:10 deliberations 96:23 delineation 155:14 delineations 155:17 deliver 293:4 delivery 164:12 Delta 74:15 379:6 delving 201:20 demand 181:2 demarkation 268:8 Democrats 103:5 demonstrate 34:17 57:4 65:7 67:15 72:19,22 212:7 362:24 demonstrated 8:23 24:8 238:15 demonstrates 25:4 70:3 336:4 349:13 demonstrating 67:7 304:15 305:14,15 demonstration 30:2 Demonstrations 30:15 30:16 denied 326:16 denies 174:17 denominator 343:4 345:8 361:24,25 deny 80:8 department 36:1,2,3 37:3 74:10 249:13 250:16 275:22 276:5 308:2 departments 276:14 286:21 depending 11:22 136:23 depends 129:24 136:10 266:12 370:9 383:11 depercolating 362:25 depicted 26:6 27:14 42:21 depicting 26:14 derive 378:18 describe 34:20 214:15 214:16,17,18 described 33:6 52:8 59:6 268:7 280:13 336:21 344:21 describes 46:11 69:14 269:15 describing 381:9 deserve 227:8 deserves 293:14 design 235:14 314:6 designated 340:3 designation 135:14 336:9 designations 135:22 designed 103:14 120:15 120:16 121:2 289:1 323:7 designs 231:23 desire 82:4 desired 194:1 despite 134:8 destined 236:18 detail 90:8 139:12 164:19,22 208:12 270:12 280:8,10 296:25 303:21 370:21 371:11</p>	<p>details 66:14 220:5 269:19 270:5 297:6 303:21 detect 216:23 detecting 216:25 determination 17:7 135:23 141:24 156:2 172:23 174:21 181:12 306:18 312:20 determine 32:4 155:15 170:7,12,19 173:4 177:3,8 181:14 243:8 345:12 355:18,22 364:6 373:7 determined 135:24 170:3 371:15 determines 345:8 determining 170:5 181:15 devasted 95:4 develop 8:7 53:22 55:12 67:19 68:3 104:22 112:18 144:1 168:9,12 169:3,24 176:5 178:3 187:8 200:4 208:11 212:13 213:4 231:4 298:2 305:23 310:4,7 310:11 356:22 developed 32:24 36:21 67:17 86:16 109:14 139:10 155:25 168:7 169:9 189:5 209:10 212:14 253:14 315:19 345:2 347:5 352:15 353:10 362:5 developing 104:17 112:15 114:21 143:20 185:12 203:24 221:21 231:15 287:1 353:16 development 70:11 109:4 174:16 187:17 204:21 292:15 305:12 315:24 347:7 dialed 371:23 372:4 dialogue 134:2 diaziron 52:14,25 53:9 340:12,20 383:7 dictates 137:21 138:13 dictation 138:21 141:3 142:1 die 226:21 differ 252:1 difference 110:9 112:14 137:9 148:20 149:16 160:13 184:5 186:15 217:5 248:9 284:19 329:12,14 346:15 348:7 352:19 353:15 370:3 differences 129:6 191:19,20 337:11 different 15:18 23:23 26:6 29:7 31:3 32:5 63:5 65:22,24 78:25 96:17 99:19,24 100:2 100:20 116:22 129:19 131:24 132:4,7 135:11 136:5 138:9 145:24 153:12,17,18 156:24 167:14 178:25 180:12 181:8,12,16,19,22 182:7 185:12 189:25 191:25 204:5 212:25 213:15 214:19 215:17</p>	<p>215:17 222:23 242:21 253:14 259:7 262:14 273:19 279:25 289:16 294:9,12,18 303:18 337:5 339:3 345:17 358:9,13 359:8,14 361:21,25 362:14 366:14 370:5 differently 135:13,16 343:19 difficult 13:21 65:12 83:7 154:16 206:4 210:16 245:13,14,18 252:6 253:7 261:1 297:9,10,13,22 300:3 326:8 368:6 difficulty 249:19 255:3 292:21 329:10 dig 246:19 digest 165:2,7 dilemma 287:3 297:17 diligence 195:19 diligent 307:8,10 dime 329:4 349:18 dimension 89:19 diminish 373:25 dimmed 134:22 Din 4:9 287:12 289:23 291:9 293:10,12 295:3 dinged 380:18,20,25 dinner 282:23 diplomacy 319:1 direct 128:5 140:5 183:14 240:8 242:4 309:23 375:4 directing 298:22 direction 239:11 240:6 384:20 388:10 directions 308:20 directly 49:1 94:15 117:25 118:2,3 183:4 190:6 191:18 207:19 277:10 288:7 376:15 director 92:24 110:13 195:6 228:24 295:7 296:20 363:22 376:18 Dirk 4:22 363:19 365:1,7 disadvantaged 43:4,24 89:25 245:24 336:17 disagree 17:8 84:8 137:13 139:6 140:23 151:11 186:19 376:7,8 disagreeing 350:18 discharge 1:1 2:1 9:21 10:17 23:2 24:21 27:22 35:8 39:10 53:9 55:11 60:9 63:15 65:4 65:22,23 66:1,1,5 107:20 113:7 141:13 166:13 175:23 180:3 278:9 314:9,11 322:22 336:1 344:19,21,22 discharged 1:2 2:2 24:22 39:16 discharger 10:4 34:23 64:2,11 137:20 166:10 166:11,16 173:9,17 174:24 176:23 275:19 314:11 dischargers 31:15,15 32:3,10 33:8 34:16,22 36:23 53:22 57:21 65:1 84:1 137:15 138:2 141:20 174:8,25</p>	<p>176:2 186:11 224:15 304:16 322:22 323:16 discharges 10:17 23:2 25:1 32:23 34:18 37:17 39:2 40:8 42:16 49:1 53:20 61:14 149:21 175:21,22,24 176:24 243:16,16 discharging 49:5 314:22 382:20 disclose 13:9,22 disclosed 372:18 disclosure 56:5 122:25 discount 225:17 discovered 25:12 discretion 136:7,15,24 139:19 148:3,9 161:2 177:9 292:4 discretionary 184:8 discuss 107:17 146:4 157:19 187:6 229:2 265:7,8 268:7 272:16 discussed 13:19 112:14 113:13 144:23 145:10 148:5 156:15 157:13 180:9 discusses 180:2 discussing 28:6 46:5 273:23 365:21 discussion 10:2 23:14 75:19 82:3,4 90:7 129:13 150:4 163:15 165:3 171:12 179:24 282:6 286:5 293:19 360:23 discussions 81:22 107:19 117:20 199:13 266:15 disease 321:11 disinfect 247:16 disingenuous 257:17 dismiss 64:16 disparity 273:19 displaces 332:10 disproportionate 326:11 disputing 221:4 disrespectful 325:2 dissolution 133:21 dissuaded 323:9 distance 200:18 distinct 370:6 distinction 171:16 277:14 district 74:7 92:23 105:5 107:6,7 115:9 districts 315:25 327:14 327:16 distrust 213:19 disturb 152:6 disturbance 152:2 disturbances 152:12 ditch 261:22 296:7 diverge 208:16 diverse 78:21 325:17 diversion 348:10 diverted 83:6 divide 148:18 division 36:7 373:22 doable 339:20 Doctrine 72:8,10 document 19:3 20:12,14 50:7 113:15 152:21 191:10,10 192:9 200:4</p>
---	---	---	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>200:6,7,9 201:25 230:10 documentation 36:20 documentative 198:14 documented 40:4 42:13 42:18 229:13 238:11 documenting 38:11,13 323:3 369:20 documents 13:5 20:1,5 192:8 197:23 220:23 doe 384:21 dogs 291:1 doing 42:8 56:18 67:7 68:15,15,16 69:3,23 70:13 71:6,18 82:6 91:3 126:21 127:23 143:19 156:14 168:4 171:19 173:6 175:2 188:9 189:2,7,8 192:24 194:24 212:8 242:16 246:4 254:15 255:12 274:13 278:16 280:1 303:5,15 318:1 330:4,7 334:1 335:21 354:23 357:13 358:12 361:21 364:7,8,9 369:13 372:3,7,9,10 385:19 dollar 202:9 dollars 24:16,16,21 25:3 25:18 32:13 67:14 72:22 82:23 204:16 214:21 216:11 238:21 248:4 303:2 329:20 331:22 domestic 43:22 44:1 90:2 Don 226:1 door 7:11 dots 46:23 47:1,5 48:8 58:17 dotted 278:15 doubt 162:15 download 186:22 downstream 47:20 dozen 215:17 Dozens 102:23 Dr 3:22 10:1,8 11:2 14:5 14:7 17:18 89:14,15 91:21 96:23 113:6 125:13 126:25 128:24 128:25 130:1,19 131:9 134:13,15 146:18,24 147:1 159:24,25 160:1 160:4,14 161:24 187:20,22 188:17 189:1 190:23 191:2 194:24 195:2 197:12 199:5 206:8,9,14 214:1,6 216:2,12,16 217:12 218:8,16,18,20 218:23,25 219:22 220:4,11,14,18 221:1 221:5,7,25 222:5 227:22,24 228:6,8 230:13 235:1,4,19 236:3 287:1 294:1 306:20 313:3 314:15 339:12 349:7 354:18 356:7,12,14,17,23 357:1 359:4,21 360:5 362:10 366:22 381:25 387:8 draft 23:14 27:10 29:5</p>	<p>33:21 35:2,19 37:4,14 40:14,16,25 41:1,2,22 51:9,15,18 53:15 54:19 55:4,7,19 56:1 57:3,16,25 58:3,9 59:3 60:21 62:3,6,10,16 64:24 68:4 98:4,7 102:17 105:15 107:20 107:21 108:7 109:8,14 109:19 111:16,20 113:12 127:3,3,14 130:3,5 133:9,10,10 137:12 139:3,7 141:8 141:17,20 142:5,15 145:5 152:22 162:8 174:1 178:22 179:16 180:10 181:16,25 195:24 196:9 210:6,8 210:9,24 214:3,8 215:1 223:22 291:23 297:8 308:15 313:17 323:15 363:6 367:3 drafted 139:25 drafters 181:3 Drafts 35:23 dragged 377:23 drain 176:4 231:21 313:20 314:9,14 348:12 350:24,25 351:4,6 drains 141:6,6,9,11 175:23,24 312:15 313:5,7,12,18,22,23 313:25 314:2,5,8,20 350:21,22,24 351:17 dramatic 207:25 drastically 174:7 draw 104:2 264:5 266:19 269:21 270:6 305:3 dress 368:20 dried 263:15 drink 43:10 248:13,14 315:7 316:8 318:11 328:9 drinkable 50:5 drinking 25:7 26:11,20 26:25 38:2,5,17,22 39:15 42:24 43:9 44:1 45:1 48:6,9,14,17 49:6 52:1,16 53:2 61:2,22 62:9,19 68:25 90:1,2,3 90:11 117:18 182:15 246:14,25 247:1 248:16,20 254:1 262:9 271:1 287:5 293:15 301:12 321:8,8 324:5 324:6 327:18 329:24 344:16 351:4,5 375:7 376:3 381:23 382:21 382:24,25 383:12,19 drip 337:25 339:25 357:4,8 drive 87:12 driven 39:23 75:5 76:10 300:20 driving 209:17 drop 78:4 dropped 160:6 203:22 drove 86:20 dry 243:21 due 63:19 78:11 96:15 147:16 195:19 238:16 257:15 duly 388:5</p>	<p>Dunham 3:16 17:1,2 18:24 19:2,10 20:4,22 40:10,16,20 41:7,14 41:21 42:2,7 131:16 131:20,23 132:6,9,13 133:5 144:9,9 145:25 146:1,14,23,25 147:2 150:25 151:4,11,17 157:11 158:1,14,16 159:3,5,8 160:3,12,16 162:15 165:11,15,19 165:22 182:24 183:2,8 184:5,7,11,13,24 185:3,6 186:16,19 187:12 188:2,21 189:4 189:24 195:15,18 266:6 268:2,4,5 270:2 273:25 282:10,14,18 347:23 354:11 355:16 356:7,11,14,17 359:5 359:13 386:4 Dunham's 190:21 282:5 Dunn 17:3 144:10 duplicative 149:17 duties 322:24 duty 13:10 DWR 229:17 dyng 47:10 271:15,16 D-a-m-r-o-n 322:5</p> <hr/> <p style="text-align: center;">E</p> <p>E 3:1,1 4:1,1 5:1,1 147:12,17 154:3,19 155:19,19 165:23 166:8 174:2 177:11 earlier 45:16 71:7 78:7 137:3 139:12 144:23 177:5 180:22 193:9 197:20 201:13 203:5 204:10 240:10 257:1 263:1 266:6 271:22 273:23 288:23,24 289:16 310:1 326:3 327:1,5 328:15 329:9 329:23 332:25 333:3 341:1 344:22 363:7 365:9 367:22 387:13 early 113:14 192:21 228:15,18,19 240:19 240:22,24 281:23 284:20 298:14 348:5 earn 298:25 easier 16:1,6 99:25 132:2 158:25 175:3 252:4 276:13 304:1 385:7 easily 16:4 308:10 312:25 371:2 easy 79:7 193:6 200:9 206:12 261:2 270:4 278:6 303:10,11,16 308:19 357:4,20 eat 315:8 316:8 eating 79:10 echo 326:2 economic 74:24 87:6 89:18 129:3 130:6 192:25 193:3,7 239:3 247:18 286:19 315:12 332:10 economical 96:13 101:3 economics 111:11 economy 113:20 114:24 308:23 325:11</p>	<p>edge 242:8 278:12 edits 37:14 educated 165:3 education 29:24 33:5 34:11 53:25 195:11 203:14,17,22 205:23 315:16 320:13 educational 204:4 299:3 effect 45:17 103:17 290:15 294:14 310:12 314:13 384:1 effected 340:7 effective 61:10 78:20 79:16 85:3 104:17 139:9 170:7,23 173:5 180:11 198:13 206:20 227:17 232:3 233:3 234:11 287:7 309:1 323:14 336:1 347:17 386:11 effectively 28:2 39:5 61:19 121:3 176:22,23 209:12 255:16,19 324:22 357:2 386:13 effectiveness 8:13 34:17,23 35:8 60:23 61:16,24 65:14 67:9 98:13 170:14,18 179:17 195:13 211:9 212:6,7 214:17 218:4 289:2 304:20 354:23 367:15 effects 47:7 90:10 249:5 357:22 efficiency 8:13 141:18 141:22 341:3 359:24 efficient 101:3 340:25 341:21,21 efficiently 61:19 effort 8:6 57:24 68:6 78:21 81:8 96:7 98:18 134:13 203:24 204:15 229:16 315:15 332:7 358:2 efforts 29:13,19,20,24 32:15,15 33:18 57:4 57:12 198:14 199:21 242:6 253:6 318:17 EGCB 377:3 eight 14:9 64:14 149:1 212:1 250:6,17 278:9 278:10,15 eight-year 176:3 eight-year-old 300:1 either 20:24 22:7 46:24 57:23 88:9 97:18 104:3 123:4 167:15 189:20 216:7 252:22 304:25 337:1 346:20 367:20 370:13 386:21 el 22:15,16 elaborated 339:13 Elaine 9:5,11 22:9 elasticity 203:9 elders 90:4 elect 154:3 155:23 178:1 elected 13:12 99:10 103:4 115:14 129:1 election 177:11 179:3 elective 73:21 electronic 8:7 57:2 59:14 60:19 126:6,18 126:20 169:11 385:10 element 32:2 184:9</p>	<p>Elementary 118:7,13 elements 31:19,20 34:6 34:7,15,20 35:4 83:16 83:17 127:7,9 156:12 182:21 219:20 220:3 220:22,23 221:4 224:6 362:22 386:20 Elena 378:20 elephant 192:1,3 elevated 147:23 eligibility 173:16 eligible 173:21 175:1 eliminate 24:25 198:7 eliminated 110:6 eliminating 352:6 elimination 325:15 Elk 118:22,25 119:1,23 Elk's 106:15 email 63:24 100:7 197:17 363:13 embrace 352:20 377:25 emerged 109:18 emergencies 317:8 emphasis 33:3 43:24 197:23 251:14 263:7 emphasize 349:16 emphasized 29:19 empirical 238:15 employ 302:19 305:10 employees 87:17 238:8 238:8 365:24 employer 94:21 238:5,6 employers 238:8 employment 299:3 empowered 388:6 empty 22:21 322:15 en 22:15,16 enable 61:18 enables 104:24 enabling 108:12 enacted 297:16 encapsulated 275:2 encircled 312:18 encourage 33:14 56:11 113:23 164:17,24 196:14 304:24 305:9 321:14 encouraged 29:20 234:5 encourages 33:22 37:5 68:4 180:17 encouraging 57:9 320:22 encroaches 166:19 endangered 47:14 232:19 ended 8:20 75:9 298:17 ends 94:22 308:18 endured 329:19 energy 304:9 enforce 67:5 120:8 139:15 140:2 227:14 227:15 enforceable 66:3 140:18 140:20 177:8 enforced 114:13 enforcement 23:15 24:10 25:15 31:10 33:12 63:14,20 64:19 64:21 70:11 75:6 148:9 177:9 183:17,18 183:23 227:17 253:6 254:25 309:23 321:24 364:16 enforcements 214:13</p>
--	---	---	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>253:16 engage 81:22,22 99:6 104:21 208:3 engaged 29:23 35:21 engagement 29:12 210:25 engine 74:24 368:13 engineer 205:9,19 367:16 engineered 278:5,7 Engineering 51:1 English 22:14 277:16 314:20 enhance 69:21 enjoy 207:11 284:22,24 ENOI 385:10 enrichment 119:10 enroll 114:18 enrolled 114:14 171:1,4 enrollment 8:20 63:19 120:16 310:10 ensuing 127:22 198:9 ensure 45:3 56:18 61:21 88:19 90:10 153:1 168:19 205:1 233:12 237:3,7 ensuring 134:5 entail 161:23 entertain 162:1 enthusiastic 232:1 entire 38:9 113:21 117:22 247:18 265:23 309:16 364:2 entirely 192:10 entirety 67:21 268:16 entities 79:1 entitled 46:10 360:23 entity 167:15,16 entrepreneur 94:22 environment 96:5 101:6 113:19 114:6 244:21 245:8 271:14,15,18 272:5 276:7,22 325:14 348:14 351:8,11 365:23 environmental 10:19 20:15 35:12,13,17 36:5 51:12 70:8,10 77:12 86:18 90:19 96:8 134:2,9,21 144:6 162:22 185:17 202:19 204:3 212:19 216:22 233:5 245:19 246:3 250:16 258:19 260:14 273:12 287:18 294:17 318:19 325:12,13,22 326:1,7 374:11 378:13 386:7 environmentalist 195:22 environmentally 333:5 envisioned 297:9 envisions 297:20 EO 169:6 179:4,5,11 187:3 202:1,3 353:17 EOs 148:3 EO's 136:23 EPA 36:7,12 48:15 227:4 248:5 255:24 equal 53:14 141:25 325:14 360:25 Equality 14:4 equation 346:13 equations 201:5</p>	<p>equipment 198:24 equities 273:20 equivalent 214:4 erosion 30:16 137:17,22 137:24 escuela 22:16 Espanol 22:15 especially 24:22 87:7 89:23 93:17 101:23 179:24 188:3 210:17 216:21 236:1 239:4 essence 265:24 essential 114:20 essentially 35:18 75:5 122:16 131:4,5 146:15 272:1 353:16 establish 233:18 established 33:8 70:2 229:24 309:17,17 331:11 338:4 establishing 108:11 331:14 Esterson 378:4 estimate 111:5 126:22 130:14 191:15,15 192:5 estimated 110:20 111:8 130:9,13 232:11 estimates 60:13,16 110:14 130:8 192:16 295:16 310:6 estimation 136:19,20 Estrella 378:16 estuary 47:12 48:12,19 49:4,14 125:1 et 201:5 202:4 214:23,23 232:19 Ethan 195:3 ethic 287:2,4 ethicacy 278:13 281:1 ethnic 97:17 100:14 ethnicity 286:19 Et1 167:8 evaluate 58:4,7 60:22 61:14,19,23 170:6 221:19 230:7 314:7 349:17 354:16 evaluated 275:4 evaluates 170:18 evaluating 170:17 evaluation 31:1 170:2 170:14 173:6 179:17 321:21 evaluations 173:3 354:23 evaporation 334:17 evening 196:23 240:15 322:7 333:20 365:5 373:3 event 243:15 eventually 65:11,17 94:8 98:8 189:8 everybody 7:4 14:13 87:25 100:7,7,8 115:17 117:8 132:2 147:13 171:6 175:2 208:7 298:11,15 344:9 344:11 355:10,11 367:23 385:1 everyone's 70:20 evidence 19:21 32:19 38:12 157:10,11,25 158:1 209:12 268:8,10 268:12 270:12 292:13</p>	<p>323:2 evidentiary 268:11 evolved 108:15 Ex 10:10 exact 17:24 19:5 42:3 132:9 141:22 319:14 348:1 354:14 exactly 45:16 50:14 95:15 136:12,17 166:4 193:23 371:11 examination 77:3 examine 287:3 example 20:11 24:12 25:1 26:7,25 33:23 36:16 56:9 57:7,12 58:5 77:2 109:18 110:2 113:2 120:19 126:13 200:3 203:7 213:8 216:17,18 223:9 230:25 238:22 242:15 246:16 259:23 278:19 331:18 337:11 345:10 345:15 360:16 363:11 371:16 examples 25:19 43:1 80:14 122:25 136:1 137:14 304:11 305:3 366:13 exceed 249:17 exceedance 187:1,22 188:4 exceedances 250:19,24 exceeded 48:9 118:5 176:3 249:18 exceeding 49:7 exceeds 27:3 44:11 excellent 36:9,16 excepting 175:23 exception 55:2 127:6 290:18,20 exceptional 8:11,24 excerpts 18:10 20:23 excessive 183:19 exchange 195:1 excited 100:10 213:2 exclusion 212:18 exclusively 59:17 excuse 41:15 133:13 136:3 138:1,6 158:16 264:18,23 executive 3:11,11 7:6 15:12 68:11,12 73:10 78:15 107:24 110:12 135:24 136:6,15 147:23 153:9 156:1 161:3,5 167:3,7 168:22,24 169:16 172:22,22 174:17,21 177:22 178:3 184:3 195:6 290:8,10 295:7 353:8 363:25 exemptions 350:23 exercise 71:2 369:17 exercised 195:19 exhibiting 62:15 exhibits 269:12 exist 113:3 156:5 182:14 223:3 existence 331:16 333:7 existing 8:9 26:14 33:23 58:1 66:13 108:23 138:3,10 153:7 176:16 245:23 251:12 305:3 exists 120:17 153:21</p>	<p>159:10 175:18 178:10 183:7,8 314:9 expand 214:4 315:16 expect 92:3 284:1 expectation 152:17 expected 108:14 164:13 298:7 299:17 expecting 121:18 expended 290:23 303:2 expenditure 369:15 expense 250:21 307:21 expensive 91:16 122:10 378:2 experience 207:18 280:18 367:18,19 experiences 100:24 experiment 359:15 expert 224:22 246:12 303:15 330:25 366:11 experts 252:19 expired 287:22 290:4,14 explain 145:22 150:24 150:25 169:14 294:13 300:1 342:6,9 explained 67:1 99:23 explanation 156:10 explicated 376:1 explicitly 31:25 expose 47:8 express 107:22 147:8 197:10 358:23 expressed 82:1 101:19 108:17 111:17 115:4 125:15 126:1 134:16 147:9 148:7 149:8 151:13 174:5 expressing 103:7 expression 112:20 extended 108:24 175:20 203:4 250:5 extending 168:25 extends 255:18 extension 290:11 315:23 345:2 extensive 28:13 36:15 36:20 extensively 66:20 extent 83:11 151:20 266:21 348:16 external 221:10 extra 11:18,19 14:3 15:8 16:24 190:18 263:7 extracted 91:15 extraordinarily 210:16 extraordinary 49:12 70:6,17 extreme 234:8 extremely 36:21 48:2,20 49:23 119:7 198:9 199:3 216:20 223:10 290:21 eyes 270:16</p>	<p>facilitator 185:15 facility 150:12 fact 24:8 29:7 47:24 56:22 75:1 77:7 78:14 83:5 89:6 97:19 100:3 100:12 139:13 144:13 148:8,11 152:7 169:23 180:2 187:13 197:14 201:15,21 202:2 234:6 238:10 248:22 250:12 265:23 267:24 290:22 320:23 327:17 354:6 364:2 371:14 373:7,8 facto 255:16 factor 64:19 190:13 factors 307:7 facts 143:4 faculty 191:4 206:15 fail 171:24 222:10 318:25 failed 95:8 fails 94:16,23 104:18 293:4 failure 32:7 112:8 174:23 202:8 224:14 296:4 failures 114:17 225:25 fair 11:16 201:17 213:19 219:12 264:9 270:8 fairly 25:6 364:25 366:25 fairness 162:3 faith 172:20 286:2 302:9 329:4 fall 12:20 110:10,15,16 110:25 136:22 166:7 335:16 368:18 373:12 falling 217:21 fallow 280:20,22 281:4,5 falls 136:16 false 140:7 familiar 12:8 families 105:1 327:10,14 family 318:9 far 20:8 21:1 25:7,21 26:16,22 29:8 38:13 67:10 84:13,14 103:11 113:21 120:20 121:2 128:3,10,10 144:8 171:12 179:6,15 198:17 209:18,18,21 217:8 220:16 243:1 249:22 262:12 271:7 275:11 298:2 321:19 341:11 366:3 384:16 farm 14:14 43:22 51:12 53:12,22 55:2 58:4,6 59:23 67:21 90:21,21 93:2,25 94:9,20 98:13 99:18 105:24 106:25 109:5 110:18 126:23 129:23,24 132:23 133:1,2 135:4 136:11 147:14 152:14,17,19 153:3,4 155:5 161:20 170:7 171:20 172:6,7 172:10 184:17,25 185:24 187:11,12 197:11 199:2 207:24 211:4,4,5,9 212:13 214:16 215:16,19 218:5,6,18,19 219:14 225:8 226:24 229:22 230:12,16 232:2</p>
---	---	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

236:17 242:10 252:17 278:12,18 279:23 290:19 295:7 297:11 297:12 298:23 310:20 332:24 338:11,20,21 338:22,24 340:2 348:7 355:18 356:3,3 357:12 359:8,14 362:15,21 365:14 366:17 367:4 370:7 375:20 379:7,17 383:24	farm's 56:20 farm-by-farm 356:1 Farr 3:19 73:2,18 74:2,5 77:24 78:3,4,14 80:12 80:20,23 81:1,24 82:5 82:22 83:1,4,24 84:17 86:9,22 87:11 89:15 90:15 92:12 95:15 123:24 239:22 240:10 266:15,15 Farr's 272:23 331:17 farther 369:18 372:2 fashion 187:10 364:6 fast 213:25 219:25 254:16 280:23 355:25 faster 371:8 father 76:22 299:25 favor 352:1 FDA 74:11 fear 64:19 86:13 87:4 93:22 94:6,7,7,11 95:5 100:1,4 149:5 199:14 358:24 feared 94:1 fears 95:10 feasibility 151:23 feasible 114:21 151:20 151:24 February 12:15 13:4 28:10 35:19 64:18 81:11 107:13,15 113:14 115:5 134:16 144:12 265:6 288:11 Federal 88:1,3 273:4 Federation 135:5 feedback 32:3 83:21 104:15 168:14 206:3 feeding 74:21 feeds 381:7 383:24 feel 9:8 19:7 22:22 135:8 144:18 199:6,23 208:6 289:14 300:18 302:10 311:1,4 358:11 385:24 feeling 82:12 161:25 192:24 224:3 feels 158:9 fees 30:8 63:19 213:1,3 232:14 feet 379:22 384:6 fell 216:4 fellow 132:17 246:2 felt 76:8 101:24 216:8 FEMA 362:3 fences 237:6 fertility 67:22 fertilize 226:25 338:4 fertilizer 39:9,14 40:1,6 42:14,23 215:6 219:5 243:13 251:10 253:2,4 253:9 308:21 335:22 348:4 368:23,25 369:12 381:19 fertilizers 256:24 field 37:2 226:25 230:8 242:9 280:19,22 281:3 312:11,12 fields 301:24 302:1 305:6 fifth 29:8 fight 300:20 figure 80:10 83:21 95:10 95:11 137:5,10,10 204:9 210:12,15,17 211:6,13 222:16 264:4	270:21 303:9 309:3 331:6 332:16 334:13 339:13 358:10 361:8 363:15 371:21 385:17 figured 250:12 282:1 358:7 figures 107:8 137:2 figuring 334:21 file 1:25 53:21 183:11,12 filed 84:22 188:5 290:9 files 292:12 filing 55:2 139:23 Filipino 97:18 fill 7:13 169:11 235:21 filling 95:5 384:20 film 286:24 filter 247:6,16 filtering 91:16 filtration 299:9 final 14:19 82:17 95:19 104:9 110:7 finalizing 108:9 finally 32:7 52:3 59:15 113:5 174:23 210:1,24 239:20 247:9 332:1 337:25 358:7 380:9 Finance 291:18 find 34:1,12 36:8 63:23 90:8,13,24 99:24 121:18 125:1 134:10 134:13 172:3 176:6 188:5 202:2 209:3,18 258:3 259:9 311:22 312:6,6 340:11 360:23 363:4,11 380:14 finding 78:11 133:22 142:10 216:22 251:9 255:14 findings 19:14 42:13 143:1,2,3,6 216:17 217:6 finds 239:5 fine 73:23 148:10 157:18 194:9 220:4 225:18 259:3 269:22 280:8 352:9 386:22 finer 64:7,7,16 fining 89:9 finish 15:9,10 217:10 finished 206:21,22 finishes 41:18 first 9:1 14:1 17:5 22:22 29:15 49:9 51:10 75:8 75:10,16 79:12 85:11 85:12,18 89:7 90:20 92:15 100:18,22 108:10 116:13 117:8 137:19,19 145:9 150:9 154:24 155:21 159:20 163:22 165:23 166:25 166:25 167:6 175:20 179:2,14,17 185:5 186:23 191:14 195:13 203:8 245:8 246:18 247:23 251:1,2 252:16 255:8 259:23 260:21 261:6 274:15 277:8 282:8,12 283:17,24 288:25 293:13 299:14 303:12,24 306:15 308:6 313:15 317:7 319:6 320:9 335:15 338:3 345:1 358:8 368:19 369:16	Firstly 199:20 first-hand 109:9 fish 36:2 47:19 261:12 Fisher 3:21 132:25 135:4,4 148:4 149:10 366:18 Fisheries 36:4 fisherman 47:20 fishing 261:13 fit 145:16 235:6 fits 51:16 62:6 177:20 308:7 fittest 329:11 Fitzhugh 4:14 310:15,16 five 14:5 22:22 31:19 59:24 92:10 111:23 126:14 131:20 182:24 183:1 194:8,9 208:18 212:1 219:20 220:3,22 224:13 250:10 255:9 269:23 288:13 307:12 322:8 323:20 329:20 331:22 339:22 340:19 349:12 358:8,10 379:8 381:12,14 five-minute 282:10 five-year 34:19 250:4 fix 232:23 flag 272:15 flaw 34:5 143:10 flawed 294:6 flexibility 57:17,21 58:3 95:18 231:10 304:21 370:14 flexible 321:19 Flies 47:23,23,24 flimsy 359:25 flip 293:23 flips 294:8 flood 259:23 357:6 flow 117:10 244:3,4 Flower 56:13 flowing 262:16 flows 280:21 fluid 293:22 flush 75:10 99:11 195:13 fly 167:10 focus 36:18 39:23 51:18 55:5 59:3,5 62:7 134:22 188:7 197:15 213:7,8 236:19 253:5 259:5 290:13 303:23 323:1 focused 33:4 43:18 51:8 212:18 376:13 focusing 43:25 46:8 59:17 242:6 273:5 fold 48:10 folds 49:7 folks 15:4 73:13 94:17 95:7 99:17 116:7 136:24 137:8 138:13 140:12 149:24 162:21 162:24 163:16 178:1 189:11 195:23 224:9 249:7 252:23 284:1 329:21 338:17 353:21 373:18 386:7 follow 63:22 73:22 98:19 145:8 158:24,25 289:19 294:9 308:20 347:2 followed 14:2 23:15 following 11:25 14:2	31:21 133:20 138:16 310:20 follows 13:25 follow-up 45:15 61:21 187:20 189:5 314:17 317:20 food 47:23 88:18 105:1 109:23 110:1 233:21 236:22 237:1,9 308:11 308:16 315:8 316:8 foot 199:18 239:14 315:8 379:15 footage 40:12 Forbes 37:1 force 148:12 219:8 225:3 239:24 255:20 270:9 forced 104:2 111:14 219:3 forces 100:21 forcible 67:3 forefront 237:1 foregoing 388:11 foreign 239:7 forget 163:7 forgets 328:7 forgive 255:14 form 54:13,14,25 239:25 248:25 371:17 384:20 formally 146:24 format 157:14 242:18 268:14 354:20 formed 169:3 292:17 former 146:14 165:13 376:12 forming 322:16 forms 351:15 formula 348:4 353:7 355:1 Fort 76:1 Fortat 374:25 forth 11:20 81:15 83:15 116:22 140:5 162:5 172:24 179:1 223:21 223:22 388:8 fortunate 309:23 384:25 forum 233:25 325:20,21 forward 9:7 17:10 21:13 68:22 96:25 170:6 172:20 175:5 177:24 178:2 185:18 194:15 210:25 237:19 254:11 275:3 278:5,8 288:3 288:12,18 289:25 292:19 300:4 305:23 326:17 332:4 387:9 foster 36:14 found 29:21 98:22 99:16 180:11 235:25 250:17 291:21 301:24 foundation 119:2 134:1 322:6 331:14 332:5,23 founded 322:13 four 28:18 29:7 83:14 136:3 188:18,18,22,23 189:1 208:22 211:25 214:15 265:9 281:3 288:13 319:2 322:9 328:16 368:24 370:5 382:2,13,15,15 Fourthly 111:17 four-year 205:19 fraction 64:8 frame 33:17 124:6 166:3
--	---	---	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>169:1,4 179:21 274:25 frames 176:11 178:20 178:22,23,25 182:22 framework 331:5 Frances 1:24 2:21 3:5 7:7 21:10 146:3 273:15 320:8 388:4,20 Francis 4:18 322:4 323:23,25,25 frankly 76:10 82:5 83:11 149:15 163:11 181:3 181:23 210:11 222:13 222:14 227:8 253:6 264:9 271:21 275:5 319:6 326:10 386:25 Fred 230:13 free 22:22 68:2 248:3 275:14 276:3 frequently 369:2 fresh 74:22 79:9 88:7 271:17 freshwater 231:25 366:9 friend 260:23 274:11 friendly 200:5,6,12 friends 87:14 front 10:5 21:20 244:10 299:21 312:2 322:24 322:25 333:2,23 334:3 frontier 85:8 fruits 74:22 frustrated 311:18 318:25 frustration 82:8 83:5 326:3 Fuertes 17:6 362:10 full 65:4 71:3 90:7 131:24 289:9 357:25 369:23 388:11 fully 12:5 13:21 50:4 89:17,17 108:14 113:3 113:24 198:6 fund 212:24 216:1 217:15 247:2 320:13 fundamental 84:12 126:8 130:23 156:17 212:16 fundamentally 33:2 105:23 155:22 156:24 160:13,15 funded 30:4,12 247:3 336:3 342:3 347:25 funding 29:24 33:4 91:4 215:24 218:12 231:15 236:24 237:18 247:2 247:10 funds 30:6,7 32:14 74:10 235:12 331:22 funnier 373:4 funny 199:6 223:23 further 31:14 41:21 64:1 81:22 112:3 118:7 142:8 143:18 147:5 186:13 200:17 287:8 307:21 388:13 furthermore 36:19 321:25 future 69:23,25 80:3 93:18 190:10 193:12 198:17 224:25 242:23 259:6 296:23 301:8 313:24 324:6 F-i-t-z 310:16 F-r-a-n-c-i-s 324:1</p>	<p>G</p> <p>G 42:1 45:8 175:13 Gabilan 230:17 299:24 Gabrielle 4:19 326:25 327:4,7 Gafney's 260:22 Gail 316:13 317:2 gain 235:4 365:12 gained 60:25 372:5 gains 193:6 gallons 380:16 game 36:2 193:15,16 270:8 274:20 366:21 gamma 248:22 gap 143:4 gaps 129:13 GARRITY 1:24 2:21 388:4,20 gas 368:12 gathering 376:13 gearing 30:20 gee 189:2 general 122:17 123:3 147:6,15 163:17 223:24 254:20 258:16 319:12 345:24 362:20 371:10 372:15 generally 35:14 38:20 50:3 123:18 157:9 268:25 269:10 342:2 358:6 generate 215:11 generated 217:8 331:12 generates 308:14 generation 69:25 318:8 358:18 379:5 generations 69:23,25 259:6 301:8 generic 184:7 generosity 205:25 gentleman 290:3 Gentlemen 189:19 geographic 186:8 280:9 280:10 364:10 geologist 51:1 205:10 367:17 geologists 155:17 George 195:4 197:2 Geotracker 201:1,2,2 Geotracker 8:9 getting 22:6 27:16 59:21 71:20 131:3 179:15,19 207:8 215:19 216:19 216:24 224:10 227:9 227:13 245:2 252:12 263:22 267:18 272:4 275:14 288:14 289:3 298:12,13,15,16 312:16 328:20 380:13 Giannini 4:22 363:19 364:24 365:1,1,5,7 366:19,20 gift 306:23,24 332:17 Gilroy 42:13 Gina 4:7 283:7 285:23 286:1 give 14:1 21:2 73:18,19 77:8 84:11 125:21 131:14 149:4 151:15 165:7 168:21 191:15 194:12 199:17 203:8 206:1 211:23 215:23 224:3 245:22 247:7,20</p>	<p>270:13 281:17 300:20 302:6 306:13 307:5 319:12 386:6,20 given 18:19 19:16 34:12 44:18 62:17 124:6,11 125:19 129:19 136:15 153:3 197:14 361:10 380:10 gives 178:1 252:8 280:8 giving 81:1 99:4 206:3 276:3 306:24,25 glad 376:5 global 239:6 go 10:13 16:25 22:24 41:20 42:9 66:14 73:3 73:9 85:6 87:15,19 88:3,9 94:12 95:13 97:10 99:13 100:12 101:8 128:1 132:3,15 135:6,24 145:22 151:5 157:5,6,7,18 158:6,13 158:14 159:13 163:21 166:24 170:6 174:19 175:7 176:7,14 178:15 178:16 179:22 187:5 187:14,21 188:4,7,14 191:2 193:19 195:4,25 196:24 209:19 211:1,1 211:12 217:20 218:24 220:16 221:22 225:19 227:23 228:22 235:10 235:20 240:24 246:17 248:1 249:20 250:25 251:3 252:4 253:13 254:11 261:9 268:22 270:18,19 274:21 275:24 276:6 282:8 284:22 285:23 289:25 292:19 298:20 300:2 300:24 303:3 308:11 311:12 313:15 318:10 318:24 320:9 332:1,4 337:17 354:17 355:14 360:20 361:20,25 364:5 384:23 385:3 goal 32:5 70:9 112:10 134:24 310:3 356:6 369:17 goals 89:4 91:3,13 114:18 198:24 226:9 226:17 239:18,18 God 218:2 goes 15:7 88:22 100:24 119:20 137:17 169:15,18 181:6,9 246:19 247:18,19 312:22 321:11 328:3,5 351:1,7 going 6:9 10:1 12:19 13:18 15:8,17 17:9 22:9 25:23,23 28:3,5 28:11 29:11 38:24 39:3,5,21 43:15,16 46:5 50:6 63:13 67:4 70:19 73:1,14 75:21 75:22 76:4 77:1,15,16 79:17 80:23 81:18 83:14 85:18 87:22 89:10 90:9 91:14,14 91:16,25 92:3,3,6,11 93:23 94:4,4,10,12,13 94:14,18,25 95:4,11 95:13,14,16 98:15 100:4,25 115:15,16,21</p>	<p>116:6,8 118:3 119:4 122:5 131:6 135:6 144:1,10 145:3 146:7 148:22 150:12 154:5 157:20 158:18 159:8 163:21,25 166:20 167:1,12 169:10 171:18 173:19 175:5 176:14 178:14,16,18 179:13,21 180:7 185:8 193:17,20,21,22,24 195:1 198:10 199:16 199:17 201:7 202:4 203:13 204:4 205:1,3 207:23 211:1,1,12,13 211:17 212:12 213:20 213:21 214:7 215:11 215:12,13 219:4,4,5,6 219:7,7 222:16 225:18 227:9 235:10,23 236:9 236:18 237:7 240:11 241:13 245:16 250:9 252:5,6,17,20 254:1,3 254:3,4,5 255:6,8 257:19,21 260:8 267:4 269:24 274:21 275:1 276:12,16 278:8 279:7 279:22 280:10,25 281:1,4,16,24 282:2,5 282:20,21,22,23 283:12 284:3,15,25 285:2 287:13 288:25 300:24,25 306:11,13 306:14 307:10 312:4 318:1 322:24 327:17 330:3,8,10,10 334:2,4 334:5 338:16,22 339:17,19,21 340:21 344:7,18,18 346:17 348:11,15,20 350:3 353:22,22,24 354:22 356:2 358:9,24,25 360:4 362:14,19 364:19 365:12 368:15 372:5 374:8,11,13,19 376:19,24 377:4 379:6 379:21 380:9,11,18,20 380:25 384:23 386:2,5 387:11 golden 203:19 205:22 golf 380:24 Gonee 7:11 gonna 95:15 261:1 good 6:4 23:8 37:23 39:7 45:24 46:1 50:24 62:22 63:8,12,12 67:6 75:24 81:20 82:11,16 84:9,11 85:15 92:19 93:2,2 97:4 102:8 105:14 107:5 114:15 121:20 132:16 147:1 161:13 172:13,20 173:20 192:15 201:20 201:21 203:25 216:22 219:22 226:18 228:5 228:23 236:3 240:20 241:1 246:22 247:15 249:9 258:17 259:18 261:20 272:15 274:10 274:12,21,24 275:23 276:20 278:2 281:20 288:15,16 292:17 293:12 295:5 304:6 310:9,16 318:7 321:18</p>	<p>322:7 323:25 331:4 333:20 337:10 346:22 348:8 356:21 357:6 359:22 365:5,9,22 367:25 373:3 379:18 380:12 385:1 387:1,2 goodwill 112:21 Gordon 375:1 gosh 260:18 gotten 162:13,16 govern 275:17 governing 308:25 government 32:16 35:21 88:3 167:24 168:5 315:3,15 318:18 319:24 331:21 363:22 governor 306:24 Governor's 12:22 gowns 266:9 GPR 275:21,21 grab 353:6 grandfather 76:22 grandkids 318:10 grant 30:6 91:4 217:13 217:14,15 granted 32:14 79:19 217:1 292:1 grants 204:16 303:2 Grape 315:22,23 380:3 grapes 44:14 315:12 383:13 graph 48:13 119:16,19 gratitude 107:23 grave 111:17 Grayson 108:4 great 11:15 38:2 77:2 127:16 131:23 201:23 283:13 319:23,25 330:6 337:14 369:16 greater 27:12 53:14 103:9 229:23 235:13 271:20 green 29:1 46:25 59:2 60:2 75:4 77:2 78:25 225:24 365:7 greenhouse 59:25 334:16 greenhouses 58:23 59:12 243:2,3 244:6,7 244:8 greens 75:7 109:24 greet 187:15 Greg 3:23 194:14 195:5 grew 79:18 206:11 greyish-blue 46:20 grievance 338:19 Grocery 99:18 Groot 4:9 289:24 293:10 295:4,5,6 296:17 gross 259:18 grossly 238:10 ground 127:17 134:14 196:6,9 213:6 294:15 311:23 316:9 365:13 372:8,11 groundwater 23:25 25:11,17 27:21 32:22 37:8,21 38:2,4,9 39:10 39:17 40:2 42:12,16 44:5,10,20 50:5 52:18 53:13 54:8,9 56:2 57:23 58:1,2 61:1 62:10 70:17 76:2 85:13 89:22 122:15</p>
---	--	--	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

123:2 141:3 142:6 148:19 149:2,13 153:18 154:6,12,13,22 173:12,15 175:24 176:4 177:14 178:8,9 178:12 197:18,25 198:8,15,25 203:1 205:8 213:8,10,12 247:14,16 249:11,25 250:1,5 251:23 252:10 255:7 259:9 279:3,4 279:19,21 280:2,6,16 280:16,17 295:15 301:20 310:3 316:20 316:24 318:12 320:18 320:24 321:8,21 331:10 334:15 336:16 340:7 344:14,16 350:11,14 351:1,12 352:7 369:24 372:17 groundwaters 271:12 groundwells 271:1 group 14:3,6,9 17:4 34:21 57:13 86:19,19 100:16 123:20,20 130:10,11 131:13 133:2 161:8 167:10,11 167:20 207:19 211:11 222:23,24,25 228:25 229:4 230:3 240:2,5 260:21,24 273:20 329:22 347:4,6 367:13 373:23 groups 14:2 29:25 30:22 33:15,16 57:17,20 99:18 100:20 103:1 133:3,4 200:14 260:15 262:7 304:17,18 318:19 319:19 grow 59:22 79:14,23 80:3 87:23,25 88:4,7 332:16 338:14 381:16 383:1 grower 58:5 79:5 87:13 112:7 136:8,9 137:12 141:14 171:13,14 173:24 184:11,14 185:24 187:15 192:13 195:23 211:25 255:1,2 264:11 294:7,8 318:8 335:18,21 345:7,20 346:8 361:4 363:8,14 367:6,24 372:1 growers 8:19 27:19 39:13 54:3,22 56:7,10 56:15,17,18 57:1,4,25 58:4 59:14 62:12,14 64:22 65:11,13,18,24 66:24 67:6 76:19 77:11 79:15 85:2 89:4 99:18 100:20 110:14 110:16,20 112:6,12 113:1 114:14,17 126:5 126:18,19 132:18,21 132:23 133:2 135:11 135:12,14,16 136:5,18 136:22 137:5 138:14 138:24 139:4 140:23 155:16 169:11,22 170:20,21,21 171:1,12 171:23,24,25 182:18 183:19,21 188:18,19 188:22,24 189:1 191:15 193:2,19,20	197:7,8,9,12 207:19 208:4,5,14,20,21 209:6,12,16 210:15,18 210:21,23 211:1,3,8 211:11 212:22,23 213:1 216:4 217:22 219:11 221:13 222:17 222:19,22,23,24 223:4 242:8,18 274:10,11 292:2,3,5,7,12 293:25 296:9,15 298:4 308:8 308:10 309:11,14,24 312:10 313:17 315:6 315:22 318:20 319:18 324:25 325:1 345:21 349:4,14,18,20 354:21 358:7 359:1 360:18 362:4,7 365:8,13 366:5 367:9,10,13 371:17 373:9,11,11,20 373:23 374:1 380:3 385:15 grower-based 316:4 Grower-Shipper 132:22 Grower/Shipper 110:19 growing 53:13 85:3 346:6 368:21 370:5,6 grows 79:24 grubbing 24:13 guess 9:10,11 82:19 83:10 105:10 126:21 216:2 217:25 265:11 272:22 284:7,10,12 312:4 318:19 363:12 369:17 370:2 372:6 373:5 guest 282:25 guidance 304:25 305:18 guide 348:17 guidelines 44:23 guilty 307:20 Gunened 249:13 Gutman 197:2,2 guy 273:2 guys 73:12 135:9 136:21 211:16 306:22 365:4 380:15 386:5 G-i-a-n-n-i-n-i 365:1 G-r-o-o-t 295:6 H H 147:12 habitat 30:18 152:3,6,8 152:12 229:8 231:3,25 262:8 habitats 138:23 262:19 272:20 habits 199:12 half 23:13 28:17 46:14 47:5 48:8 51:7 62:13 66:7 68:8 71:12 92:25 125:4,5 128:11 135:19 150:6 160:6 165:21 213:3 221:11 247:22 248:6 274:1 297:12 336:19 367:9 368:23 369:1,11 370:16,24 372:3 385:13 half-inch 150:16 hall 106:14 Hamid 228:12 Hamilton 301:1 hampered 183:16 hampers 136:16	hand 7:13 358:15 handed 258:12 handful 59:23 handle 84:21 146:6 351:12 354:1,5 handout 214:2 230:24 231:22 hang 41:17 63:1 343:11 343:11 hanging 208:6 Hans 3:20 105:12,13 happen 87:3 127:20 153:10 177:25 179:21 213:21,22 226:12 294:25 321:12 368:15 happened 64:13 106:3 215:13 249:22 250:8 271:19 happening 127:17 159:18 271:14 273:1,1 374:17 376:23 happens 82:22 88:14 99:21 249:3 happy 237:16 288:12 319:7 374:12 Harbor 19:12 49:17 233:19 hard 21:8 79:8 99:22 100:8 126:20 129:24 157:8 199:20 206:24 209:16 210:11,17 211:6 212:4 215:1 216:16,20 251:8 299:25 303:1 308:14 332:16 334:21 352:8 352:23 355:24 367:23 377:19,19 380:6 harder 199:12 276:16 370:16 hardest 261:3 harmed 302:11 harmful 44:21 Harter 17:18 264:17,21 264:22 306:20 Hartfield 378:23 Hartsworth 349:7 harvest 88:6 305:4 Harvey 3:8 6:9,10 7:5 hay 22:15 head 87:3 313:11 337:19 headsets 21:20 health 24:1 26:12 36:1 36:19,25 37:3,12 38:7 39:6 44:3 47:22 48:1 49:24 52:1 68:24 70:5 71:8,21,25 72:3,5 75:7 79:11,13,13 89:22 113:18,20 168:18 238:7 249:4,5,13 250:16,22 251:15,15 251:16 258:19 272:21 275:22 276:5 286:13 286:14,21 301:16 302:24 308:2 316:22 321:2,7 324:18 325:4 333:14 healthy 50:3,4 79:14 114:6 hear 21:9 46:2 62:24 63:2 71:25 84:16,24 86:2 106:4 109:6 118:14 132:25 133:4 134:23 159:22 163:16 164:3,21 275:15	299:16,17 306:3 308:15 339:16 348:24 355:5 359:10 373:14 386:6,16,22,25 387:2 heard 7:4 11:1 43:2 51:10,24 52:3,7 54:6 64:18 66:20,24 74:11 78:8 86:4 117:7 123:14 126:24 129:1 138:19 139:12 162:10 162:10 201:13 203:5 203:21 225:13,14 262:12 280:19 282:10 310:3,6 313:5 318:23 318:25 319:2 327:12 334:25 hearing 1:1,10 2:1,11 7:19 10:16,21 11:6,9 11:10 13:25 14:25 17:19 18:8 19:16 28:20,21 64:12 66:21 83:15 89:19 98:9 107:11,11 108:1,6,16 109:1,19 113:5 115:6 116:5 128:5,5 150:5 156:13 164:16 199:14 207:10 269:14 291:3 316:22 318:16 336:2 343:24 352:4 370:20 371:3 386:5 387:15 388:7,11 hearings 68:23 102:18 112:14 318:24 hearing's 107:19 heart 272:25 293:21 heating 189:20 heavily 89:20 122:8 heavy 98:5 Heavy-handed 308:23 heck 275:13 Hector 9:6,13 21:24 283:14 height 133:17 held 10:21 107:11,12 324:17 378:8 Hello 291:17 300:10 help 61:25 84:15 90:12 101:18 111:25 117:10 131:21 165:13 170:12 170:20 186:22 204:17 204:22 205:4 207:4 220:19 221:20 235:16 237:18 239:17,18,18 305:11 309:3 311:6 325:14 332:10 333:9 356:23 helpful 244:25 294:20 294:25 342:9,13 helping 22:9 168:8 213:15 235:4 320:1 helps 15:25 Hensley 375:1 hereunto 388:16 Hernandez 9:6 21:24 283:14 hey 188:8 189:11 He'll 285:21 Hi 298:21 Hibben 195:3 Hibbin 196:19 hide 254:24 high 8:23 26:20 44:17,19 44:24 46:8 48:19 49:9 49:12,23 50:2 58:6	84:7 225:17 227:7 254:16 323:9,16 336:6 340:3 349:12,22 350:25 363:10 higher 24:2 43:4 53:4 55:24 87:21 110:22 122:11 130:25 136:9 147:24 186:11 190:4,5 250:25 251:1 361:22 higher-risk 61:12 highest 23:7 24:2 26:12 43:18 46:12 49:4,13 51:25 53:7 55:6,8 121:10 170:3,5 181:1 204:11 302:23 303:23 310:1 315:12 352:7 highlight 231:4 373:5 highlighted 136:6 137:8 366:16 highlighting 48:25 highly 42:19 46:16 47:4 121:13 263:8 328:4 364:21 Highway 243:5 high-risk 210:25 Hill 4:11 42:13 300:8,10 300:10 302:4,5,7,9 hire 155:16 205:8 hired 185:15 216:3 303:14 hiring 100:2 207:6 historically 15:5 26:10 112:6 256:20 history 29:12 81:8 85:10 181:6 252:18 325:17 370:7 hit 87:2 293:20 355:10 356:5 hits 293:21 Hmong 97:18 hodgepodge 204:5 hoe 329:17 hold 15:14 64:2 184:19 348:3 358:15 379:13 holders 205:16 holistic 203:11 home 284:22 299:9 318:24 homeowners 379:23 homeowner's 380:20 homes 336:18 381:7 383:20,24 honest 172:14 386:17 honestly 251:6 honorable 238:1 307:16 hope 36:9 77:9 92:8,16 101:11 111:1 231:9 234:21 242:22 254:7,8 254:15 284:13 319:4 366:20 372:6 374:21 375:3 377:1 hoped 270:24 hopefully 145:8 176:15 179:4 208:10 233:25 355:13 hopes 328:17 hoping 150:15 178:6 213:21 217:14 224:24 Horacio 246:7 248:18,24 254:17 Horn 118:22,25 119:1,23 274:10 HOROWITZ 3:12,16 hospitality 315:6
---	--	--	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>hosted 330:24 hot 187:25 189:25 hotel 284:21 hour 12:1 14:5 115:17 131:14 242:1,3 387:9 hours 28:22 116:11 223:15 225:23 282:1 house 291:2 359:25 household 248:6,7 housing 90:21 299:2 How's 46:3 Huckelby 9:6 Huertos 4:3 14:7 75:23 91:18 96:3,23 113:6 113:25 126:25 134:13 134:15 156:13 196:11 197:12 206:8,9,14,14 214:1,6 216:2,12,16 217:12 218:8,16,18,20 218:23,25 219:22 220:4,11,14,18 221:1 221:5,7,25 222:5 223:17 227:22,24 263:12 265:3,5 274:22 275:6 276:19 277:25 292:8 293:6 294:1 295:1 310:9 311:3 334:24 339:12 354:18 356:7,12,14,17,23 357:1 359:4,21 360:5 366:22 huge 27:4,5 74:14,24,24 75:14 76:6 80:2,2 88:21,22 96:16 100:1 160:13 217:5 218:5 226:10 268:8,14 317:16 329:6 353:22 human 253:20 271:21 330:25 331:7,8 377:6 humans 377:7 humongous 100:4 hundred 24:15 82:23 hundreds 8:19 24:15,16 27:2 32:13 75:16 267:25 303:2 327:18 385:14 Hunter 3:6 6:18,19 10:24 89:14,15 91:21 125:13 128:24,25 130:1,19 131:9 146:18,24 147:1 159:24,25 160:1,4,14 161:24 187:20,22 188:17 189:1 194:24 195:2 228:6,8 235:1,4 235:19 236:3 313:3,4 314:15 381:25 387:8 hurt 272:4 husband 378:17 hustle 211:17 Hyatt 21:22 hydro 204:20 hydrologist 205:9 334:6 hydrology 334:6 hydro-geology 367:18 Hyman 4:13 304:4 306:1 307:15,16,16 hypothetically 233:2 H-i-i-I 300:11 H-u-e-r-t-o-s 206:15 h-u-g-h 310:17 H-y-m-a-n 307:17</p> <hr/> <p style="text-align: center;">I</p> <p>idea 127:16 130:21</p>	<p>131:18 181:21 211:4 211:12,24 216:4,18 221:11 237:19 252:2 254:21 255:11,12 257:16 275:23 289:17 359:22,22 ideas 91:19 103:24 104:5 113:10,24 134:8 237:17 274:22,23 288:15 380:10 identification 61:5,9 155:12 232:9 identified 69:1 145:6 149:9 155:7 166:1 174:10 177:18 231:20 232:12,20 234:21 235:14 236:16 237:5 249:13 278:10 291:20 292:14 341:23 identify 30:24 61:1,7 151:6 164:1 170:25 230:22 232:7 233:15 234:22 237:2 334:14 345:18 349:22 identifying 32:9 43:19 identity 122:18,23 123:5 225:10 ideology 377:24 idiot 216:2 ID'd 97:20 ignore 306:12 ignoring 333:12 Il 256:20 illusion 91:25 illustrate 28:10 270:25 imagine 172:23 immediate 25:15 65:1 91:25 92:4 106:16 139:8 140:20 148:5 198:8 256:10 immediately 12:25 13:2 64:21 73:22 140:3 148:13 288:14 313:25 350:7 379:24 immigrant 286:10 immigration 94:2 immovable 225:3 impact 10:20 20:15 93:15,17 94:17 95:23 101:6 107:19 185:17 192:25 193:8,20,21,22 204:21 292:3 308:23 322:22 375:8 impacted 52:16 53:1 61:2 94:19 121:17,25 122:8 295:17 321:9 327:11 impacting 202:9 267:25 impacts 26:17 89:22 107:17 116:21 129:3 193:3,3 238:11 249:11 251:14 271:21 321:6 321:17 375:6 impaired 30:25 31:2 46:17 48:3,20 51:18 51:23 52:15 53:10,10 55:5,16 59:4 62:8 98:15 190:12 381:23 382:19,21 383:14 384:8,9 impairment 59:6,18 251:13 314:3,8 383:11 impairments 36:18,24 313:24 323:5,7,8</p>	<p>385:4 impartial 13:21 impediment 180:18 imperative 111:12 286:17 impinge 259:22 implement 8:7,16 33:9 53:22 57:5 65:13 68:20 79:8 111:18 113:7 127:22 129:22 130:18 137:15,20,25 138:25 139:4 142:8 149:4 174:9 202:17 210:12 212:10 217:17 232:6 252:7 323:6 331:6 365:14 implementable 114:22 127:3,6,13 implementation 23:15 27:17 30:15,16 31:9 31:23 33:14 36:15 39:12 62:2,21 65:19 67:8 68:16 69:10 70:11 72:10 130:15,22 131:8,11 194:3 198:8 212:11 215:2 217:13 221:8 224:7 232:17 254:9 255:7 292:15 304:20 330:9 333:11 333:13 implemented 61:9 72:23 91:12 92:7 124:20 130:4 172:10 293:3 implementing 29:17 65:5 68:19 72:9 83:23 90:9 98:14 129:16 130:8 156:21 188:12 189:12 209:13 256:6 implications 232:15 implying 341:2 importance 27:5 204:8 208:18 231:5 321:20 important 24:8 27:22 47:12 87:6 96:25 99:9 103:17 114:5 164:18 166:18 167:13 169:21 171:5,16 172:18 177:10,10 196:15 201:6,15 211:18,20 212:11 220:6 245:7 251:18 254:20 262:9 272:21,24 274:8,14 275:11,15,20 277:13 286:4,14 294:2 298:3 301:5 335:5 344:8,10 importantly 61:24 172:11 310:19 337:3 impose 307:22 imposing 239:15 impossible 215:8 275:17 impressed 207:3 impression 342:10 improper 17:25 216:21 improperly 17:21 18:11 293:3 improve 37:18 54:11 62:1 96:11,18 114:8 174:11 207:5 208:14 210:5 232:24 287:25 288:5 294:25 335:18 improved 38:22 60:21 104:11 213:5 215:18 280:23 295:23</p>	<p>improvement 8:12 28:3 32:15 49:25 60:23 92:11 104:24 118:25 134:4 152:4 196:3,5 210:5 226:12 293:17 294:15 296:6 305:18 320:2 365:16 improvements 57:6 60:21 92:8 203:6 210:8 229:14 230:11 293:20 296:16 313:23 improving 8:12 38:25 65:16 134:24 196:8 198:24 231:2 288:7 304:10 365:12 inaccessibility 78:19 inaccurate 313:18 inaction 253:18 inactive 297:4 inadequate 34:2,14 inappropriate 153:12 inaudible 48:21 72:24 133:20 335:10 incentive 274:23 incentives 57:3 incentivize 305:17 inch 150:6 317:17 379:15 inches 338:3 Incidentally 378:17 include 18:14 31:20 35:6 43:22 56:21 58:21 62:8 68:11 103:16 123:21 130:7 137:14 138:15 148:25 153:13 180:19 193:1 233:12 267:8 334:12 360:12 366:20 included 18:11 30:13 31:1 81:16 100:15 108:2 119:16,17 129:14,16 145:13 147:18,25 156:7 160:24 161:14,16 169:23 175:19 258:20 296:14 313:6 314:10 352:16 360:7 includes 27:17 52:19,23 56:22,24 57:3,16 58:3 58:9 68:16 132:20 143:2 195:12 306:21 362:21 including 81:15 103:4 104:6 123:22 127:1 130:20 134:20 143:23 147:13 197:10 204:3 231:12,21 232:13,18 232:21 271:3 315:22 324:18 325:15,17 344:13 352:17 366:11 inclusion 19:18 268:13 366:22 income 89:25 248:7,7 298:24 301:15 325:16 328:1 377:8 378:18 incoming 119:4 120:2 inconsistency 78:19 incorporate 103:14,24 157:12 192:11 196:10 237:17 incorporated 37:13 156:11 incorporating 104:15</p>	<p>incorrect 313:18 382:24 increase 64:17 198:7 231:25 386:13 increased 55:12,23 61:8 62:13,15 133:22 248:1 308:11 366:4 increasing 32:19 42:18 49:20 increasingly 44:19 incredible 8:15 74:20 75:6 incredibly 91:2 333:25 incur 33:11 incurred 70:18 independent 160:22,24 168:10 169:12,14 171:22 207:21 221:10 221:17 306:13,15 330:25 Independently 211:10 Index 305:5 indicate 28:2 38:22 39:8 42:20 152:24 154:25 165:25 170:10 336:13 indicated 40:1 56:11,13 56:15 109:10 110:13 141:8 148:8 156:9 336:2,10 indicates 32:21 141:9 indicating 46:22 indication 155:9 indicator 344:24 350:11 indicators 34:16 35:7,7 35:8 48:1 61:10,17 143:11,12,14 indifference 374:6 indifferent 374:4 indirect 193:2 individual 14:18 32:10 35:8 50:16 51:13 52:9 55:10 57:19 60:9 61:4 61:14 62:6 83:25 91:5 98:9,12 101:9 106:2 123:1,6 126:11 129:23 166:23 172:17 173:12 176:24 178:9 179:25 180:1,9,20 181:17 183:19 186:10 188:8 224:15 231:17 255:1 277:7 278:4 279:5,11 279:23 296:11 297:16 308:14 314:11 319:11 319:18 323:12,16 344:4 353:6 354:16 355:18 359:16 386:23 individually 57:23 100:12 180:5 374:2 individuals 31:16 57:17 97:21 183:15 185:21 187:14 188:16 individual's 378:6 induced 193:3 indulgence 93:5 industrial 38:6 44:6,7 industry 8:18 56:13 67:19 68:1 277:6,7 93:16 100:15 107:18 110:23 111:4 149:24 233:5 241:18 304:12 304:18 305:22 315:9 315:17 371:4 377:22 inefficiencies 338:6 inevitable 198:9 infeasible 111:10</p>
--	--	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>inferring 256:23 infinite 292:7 influence 334:15 info 103:9 inform 94:16 95:8 information 11:1 17:14 18:17,18,21 19:11,11 19:14,15,17,19,20,21 22:4 39:19 41:1 45:19 46:14 56:4 57:1 59:13 60:18,25 61:4,7,18,25 67:9 72:15,17,18,18 83:18 84:20,22 89:23 90:4 93:6 101:1 113:22 116:23 124:10 124:15 126:5 136:11 141:7 142:17,17,24 146:4,5,8,11,12,16 159:14,21 169:13 172:4,5 173:18 174:1 176:5 192:2,15 201:7 201:8 215:23 223:25 242:9 245:24 250:7,15 251:15 257:2 260:1 264:24 265:14,24 266:3,11,11 268:11,17 271:5,9 272:1 292:13 292:16 307:22 319:17 322:1 330:4 332:8 333:2,4 334:3 340:11 342:25 345:16,20 354:19 355:22 356:21 356:24 362:5,8 363:9 368:7 371:9 372:15,18 376:16,17 385:11,17 informed 30:23 inherently 200:15 294:5 inhibits 366:1 initial 8:22 208:12 initially 285:11 363:8 initiatives 109:16 110:3 innocent 299:4 307:21 innovation 203:14 204:2 305:18 330:10 innovations 331:12 innovative 96:10 209:5 input 35:12 52:6 62:4 103:2,15,22,24 105:19 106:9 134:19 198:7 229:19 292:24 355:17 inputs 271:6,7,8 344:17 355:20 inputted 168:14 insecticide 312:14 insecticides 312:13 inserting 160:7 inside 252:3 278:20,22 278:23 insists 308:6 inspecting 207:23 inspection 153:4 242:17 inspections 227:18 242:7 installing 208:8 instance 85:11 92:15 98:16 317:13 instances 280:25 instantaneous 241:25 instills 233:8 Institute 49:16 instruccion 22:15,16 insufficient 34:12 insurance 88:5 238:7 insured 234:15</p>	<p>insures 301:8 insuring 208:24 integral 8:25 integrate 70:10 78:21 229:17 231:11 233:22 234:16,23 integrated 229:3,25 235:17 integrating 216:15 232:2 325:21 intelligently 158:24 intend 198:3,6 intended 191:17 intends 268:7 intent 8:8 53:21 55:3 57:2 59:14 60:19 126:6,19 138:22 147:14 153:2 154:21 166:3,5 180:23 183:11 199:22 265:23 313:22 385:10 interact 297:19 interacting 234:9 interactions 13:11 interconnected 370:13 interest 11:15 74:13 133:21 144:16 161:16 178:14 216:8 225:19 231:6 234:5 250:14 316:9 380:6 interested 7:12 129:11 134:5 193:9,10 213:14 232:1,23 236:2,7 244:5 305:22 318:12 375:5 388:15 interesting 228:4 interests 29:11 interim 233:17 255:17 internal 161:9 210:11 internally 67:4 international 80:2 internationally 331:5 interpret 215:2 interpretation 140:10 204:6 343:18,25 interpretations 366:15 interpreted 143:15 255:24 256:2 279:16 295:20 interpreters 21:19,21 interpreting 215:5 interrupt 146:2 150:17 159:21 interrupting 348:6 interruption 184:22 326:24 intervention 134:14 interviewed 207:3 interviewing 224:23 interviews 192:14 introduce 229:16 introduced 54:7 introducing 7:20 266:23 introductions 23:9 46:7 introductions 7:2 invertebrates 47:16 investment 371:25 372:2,6 invite 73:20 333:14 invoked 382:25 involve 83:18 involved 8:17 99:22 207:19 219:5 221:20 242:11 295:10 299:15</p>	<p>involvement 24:6 involves 28:25 involving 203:25 lodine 320:20,22 irrational 378:1 irrigate 358:21 370:15 irrigated 1:3 2:3 8:10,21 9:2,21 10:18 23:3 26:21 33:1 37:18 38:13 42:14 46:20 107:21 113:8 133:24 168:1 185:16 204:10 229:23 231:14 243:16 244:18 251:10 271:8,8 310:13 323:4 370:14 irrigation 27:23 30:14 39:11 44:12 55:13 58:11 60:9,12,14 61:13 67:23 73:7 252:17 271:2 310:4,8 310:11 336:6 337:20 357:5,7,8,19 359:10 359:24 362:22 367:5 367:14 369:25 Irrigative 185:11 irrigator 357:13,14 IRWMP 235:9,10,11,13 236:24 256:7 Islands 325:20 isolated 24:18 26:23 362:17 issue 13:14,17,21 19:25 24:7 27:4 74:12 79:15 85:7 88:18 93:3 95:7 96:6,25 113:18 114:4 115:3 124:12 142:19 150:3,8,23 151:18 161:9,10 163:14 201:21 207:16 222:13 222:20 225:23 226:15 226:15,16 236:23 245:19 250:22 252:10 255:11 259:10 260:17 287:19 294:16 299:13 300:23 301:5 318:13 322:12 326:4,7,8,14 328:1 341:14 351:12 360:22 369:19 370:19 377:5,6 issued 102:21 179:10 203:3 306:12 issues 20:16 28:24 46:6 48:16 51:9 64:5 69:8 78:23 84:12 87:12,20 89:17,18 90:7 108:7 108:15 109:3,7 135:8 142:16 151:8 152:1 189:23,23 190:4,5 201:15 206:17 208:8 208:19 223:20 232:21 233:9,10,24 234:2 236:13 240:12 242:13 245:17 252:9 256:18 261:3,4 283:19 294:5 295:10 297:8 300:18 304:23 313:7 318:2 319:19 320:20 321:1 323:3 343:24 356:25 357:1 364:1,11 386:24 387:3,4 item 9:19,24 10:3 11:20 13:1 20:14 22:18 28:24 204:9 205:6 285:7 344:7,7,8,9</p>	<p>items 7:13 21:16 251:6 283:17,24 iterations 29:7</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jack 374:25 378:22 jail 89:10 January 297:4,5 Jeanette 316:14 318:5 Jeannette 317:2 Jean-Pierre 3:6 4:3 6:24 11:2 199:5,7 380:4 Jeff 6:5 10:23 Jeffrey 3:4 6:12 Jeffries 3:5 6:14,15 10:24 12:13,14 86:6,7 86:10,23 88:24 106:17 116:17,18 117:14,16 117:24 118:2,6,11,14 118:16 119:6,11,16,21 120:3,10,12 121:4 163:5,20,21 164:7,15 164:16,24 165:5 201:11 206:13 213:23 213:24 214:2 215:21 216:9,14 217:10 218:12,17,19,21,24 219:17 220:2,9,13,16 220:20,21,25 221:3,6 221:24 222:3 223:11 223:13,14 228:5 234:25 236:4,5,15,20 237:10,20 242:24,25 243:6,8,11,20,24 244:5 254:14 256:16 256:17 257:9,23 258:5 261:13,16 265:22 282:16 283:2 289:25 290:3,13,16 337:16,18 337:22 338:8 339:7,24 340:12,22 343:21,23 346:12,15 351:24,25 352:25 384:16,19,25 Jennifer 4:5 159:6 244:12,16 jeopardy 379:7 Jerardo 40:5 42:22 43:11,13 70:16 90:22 90:22 246:1,2,16,17 246:23 247:11 248:3,7 248:19 256:18 280:18 280:19 281:3 329:21 331:18,19 375:21 Jo 4:24 364:25 374:24 375:2 Joaquin 271:25 324:10 324:11,16 job 8:5,15 52:3 71:16 86:17 90:20 95:25 181:14 201:20,22,23 308:16 321:18 372:7 jobs 238:16 239:1 242:16 331:12 JOE 4:21 Joel 332:20 333:19,20 John 5:4 7:11 9:10,11 309:6 379:1,3 Johnson 4:6 258:13,14 258:15,23 259:3 289:15 Johnston 3:7 6:20,21 10:25 22:11,12,17 50:8,9,12,15,18,20 82:21 83:3,25 86:2,24</p>	<p>121:6,7 122:7,12 123:1,9 158:17,18 163:5,6 164:9 186:2,3 186:17 187:11 189:14 189:16 223:16,17 228:3 240:21 263:2 276:25 278:25 279:1 279:17 280:4 281:2,8 283:9,11,14 298:11,14 298:19 351:22,23 353:13,24 355:2 356:2 359:4 360:22 369:9,11 369:24 381:22 382:1,9 383:13,18 384:3 385:23 join 155:23 joined 10:24 89:7 90:6 joint 8:6 102:12 jointly 336:2 347:25 Jordan 3:8 22 6:22,23 10:25 123:10,11,24 124:5,17,23 189:18,19 190:8 jot 16:4 117:11 220:1 Joy 4:14 310:15,16 judgment 255:23 Julie 301:1 July 28:18 jump 214:7 353:23 jumped 123:25 jumping 220:8 jurisdiction 71:3 364:13 jurisdictions 363:25 justice 35:13 70:9,10 244:21 245:9,19 246:3 325:12,13 326:2,5,8 326:15,15,16 justification 19:13 345:13 justify 345:8</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kaitlin 260:22 Karen 3:17 4:19 9:6,12 45:21 50:9 52:8 59:7 118:19 121:8 124:25 208:17 263:19 323:24 328:23 Kari 3:21 132:25 135:4 366:18 Kay 4:8 285:22 287:11 289:23 291:9,17 Kaye 193:8 210:13 Keeling 3:13,17 37:21 37:23 40:14 41:3,5,9 41:13,16,25 42:11 45:18 52:8 54:6 59:6 73:9 123:19 124:4,8 124:22 127:24 128:10 128:14 145:25 146:2 146:10,13,17 159:13 198:12 284:4,8,11,13 285:9 363:7,14 385:9 keep 12:22 23:8 65:16 166:23 169:2 171:6 188:15 199:21 257:16 288:3 312:16 322:24 338:11 371:3,7 Keeper 260:13 Keepers 14:11 keeping 251:8 keeps 334:18 KEM 124:18 Kent 195:3 196:19</p>
---	---	---	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>Kern 291:18 Kevin 309:6 311:10 key 31:19,20 135:8,14 135:18 152:15 161:19 168:15 170:15,16 174:2 207:18 209:14 219:20,24 220:3,22,22 224:5 233:10 322:12 329:15 kick 312:5 kicking 196:4 377:23 kids 318:10 328:8,19 kill 44:25 379:14,16,16 killing 271:17 kind 9:1 13:18 65:24 66:19 92:10 99:4,6,22 100:16 107:10 123:13 124:13 127:18 130:12 137:6 150:10 176:7 188:13 197:20 205:19 212:2 214:18,20,20 216:4,5,11 223:23 225:3 235:22 245:20 246:4 260:16 264:3 266:9,12 270:12 272:14 277:16 303:15 317:15 327:25 334:20 347:1 348:1,3 354:1 363:5 367:19 380:1 kindly 247:5 kinds 68:3 80:14 93:22 213:15 215:17 219:2 King 117:19,22 375:21 Kirk 4:10 293:10 296:18 296:19 knew 12:23,24 94:3,5 162:4 205:12 371:20 know 7:14 12:14,17 15:5 16:18 27:25 41:23 63:4,10 69:2 73:2 75:6 75:24 76:9 77:13,24 78:7 79:5,11,20,23 80:5,7,9 81:11 85:1,5 86:8 87:21 88:18 92:1 92:10,11,21 94:9,11 94:12,13 97:16,25 98:10,19,23 99:3 100:17 101:17 106:5 116:19 117:6 118:17 128:17 136:21 144:13 144:22 145:9 148:11 150:10,23 152:2,16 153:2,13 154:15 155:1 155:13 157:3 158:10 158:20 159:17,22 162:21 165:20 167:11 167:16 168:23 169:1 169:18 170:11 171:17 176:7,8,21 178:24 179:2,9,23 181:13 185:20 188:10 189:11 189:20,24 190:1,6,25 192:22 193:18,23 196:16 201:1,2 202:1 202:8 203:6 205:11,12 206:3 215:9,10,18 217:1 218:10 219:3 220:13 223:17 224:4 225:9,10,20 226:4,7 226:22,24 228:1 235:21 245:2,13 246:18 247:14 248:12 248:18 249:22,23 250:18 251:22 252:5,6</p>	<p>253:6,7,8,25 254:1 256:12 258:18 259:2 260:17,20 261:1,9,22 261:23 262:20,22 263:12 264:2,3,8 265:8 266:11,15,17 267:17,19,20 268:11 270:1 272:2 273:3 274:4,25 278:15,22,23 280:21,25 282:1 285:5 294:16 311:1 312:9,19 327:19 330:1 334:5,7 337:18 339:20 340:20 340:24 342:1,13 348:1 348:17 349:20 352:18 355:24 356:9 358:8,12 361:6,7 367:6,18,25 369:5,12,20,25 370:7 370:9,10,10 371:6,7 371:11,18,25 374:3,5 374:14 376:19 379:1 380:4 382:23 384:15 384:16,19,25 385:13 386:7 387:12 knowing 279:22 326:10 knowledge 260:22 356:25 known 52:17 86:8 240:17 knows 76:1 101:22 172:19 184:16 303:4 319:14 kudos 247:7 Kumbaya 260:19 261:2 Kutchell 316:18 K-Mart 84:4</p> <hr/> <p style="text-align: center;">L</p> <p>lab 45:7 47:8 205:10,13 label 308:20 labor 43:22 84:18 87:13 87:14,15 90:22 294:21 363:21 Laboratory 18:5 19:1 39:22 labors 375:21 labs 228:25 317:11 lack 35:5 96:15 208:24 326:4 lacking 34:14 lagoon 47:20 laid 129:15 Lake 97:23 299:22 land 61:13 76:19 78:6,11 80:3 85:22 88:19 94:21 111:10,13 133:24 139:2 193:22 210:18 226:6,10 234:8 236:10,17 287:1,2,4 338:11,17 339:4 369:6 374:19 376:24 379:18 381:18 landfill 26:18 204:12 landfills 26:13 Landing 49:2 228:25 landowner 231:18 316:17 339:1 landowners 76:19 229:5 231:7 233:7,13,18 236:1 lands 1:3 2:3 10:18 23:3 33:2 107:21 168:1 185:11,16 232:14 317:22</p>	<p>landscaped 380:21 language 94:24 137:21 138:5,20 139:16 140:5 140:25 141:22 142:7 145:17 148:6 156:19 157:12 158:2 159:19 159:19 160:8 162:5,20 162:23,25 163:2 174:7 175:16,18 176:17 177:16,16 200:8,11 204:25 274:3 296:15 344:4,10 lapses 101:20 large 62:12 106:14 112:6 143:10 183:20 198:20 210:19 301:3 312:9 344:7 364:2 367:13 368:3 largely 36:11 larger 244:23 264:13 284:19 296:8 309:24 331:4 largest 38:14 251:11 311:15 lastly 177:13 328:14 337:13 late 245:2 313:10 348:6 365:3 382:12 lateness 206:2 latest 135:7 323:15 Latino 97:18,19 100:19 286:9 326:6 laundry 208:6 law 11:4 69:6 84:3,4,14 84:21 88:1 91:12 98:11 143:3 144:24 153:7 181:2 210:2 224:9 279:9,16 289:20 306:8 Lawrence 18:5 19:1,12 39:22 40:11 45:7 78:8 laws 71:22 98:19 206:4 338:7 365:20 lawyer 277:9 279:8 lay 361:4 layer 200:17 layers 365:15 layman's 344:4 leach 340:4 leaching 213:8,10 253:10 336:7 350:23 357:16,21,22,25 359:1 lead 3:10 12:25 222:15 279:12 366:13 leader 84:18 leaders 134:2 233:5 leadership 320:1 331:13 leading 78:6 123:16 198:21 leads 130:20 277:23 leafy 75:4,7 77:1 78:25 109:24 365:7 League 238:3,4,6,9 239:10 leak 25:20 leaking 317:17 learn 61:25 96:10 100:11 100:13,16,23,25 127:22 170:24 176:9 199:12 330:8 364:20 learned 76:21 212:9 294:20,22 lease 338:17 leased 339:4</p>	<p>leases 293:23 leave 73:3,24 87:9,9 115:19 182:24 193:14 194:25 204:3 228:15 228:18 240:19,22,24 270:5 281:23 282:22 283:4 298:18 340:15 leaves 312:12 leaving 155:11 183:20 226:25 228:18 344:19 led 262:2 264:12 left 7:7 55:21 66:18 70:7 117:18 141:14 165:21 183:1 197:1 219:17 241:14 273:25 274:8 347:13,14 378:24 legacy 78:5,9,12 92:1 202:25 267:17 293:6 294:25 legal 83:15 84:2,2,6,6 135:8 176:22,25 180:13,18 225:13,14 251:2 255:13 273:17 273:18 279:17 289:14 290:12 298:23 307:4 366:11 386:14,21,23 387:3 legalese 200:8 legality 133:11 179:22 289:8,9 legally 34:2,13 167:15 167:16 Legislate 329:2 legislation 180:24 238:23 legislative 180:23 181:6 291:5 300:14 310:19 330:21 legislator 306:24 legislators 239:23 291:5 335:1 legislature 103:6 291:3 legitimate 339:13 length 95:10 lenient 15:5 lens 321:2 Leonardo 70:15 Leopold 286:25 287:1 lesser 54:24 lessons 212:9 letter 64:2,3 81:12,14,20 93:7 97:24 99:17 107:9 110:12 125:17 173:23 272:10 275:12 275:20,21 276:3 289:19 291:20 292:10 306:16,22 320:21 letterhead 277:11 letters 29:3 35:23 51:5 103:7 144:7 275:11 291:18 letting 63:3 lettuce 345:16 349:9 361:5 let's 7:19 15:10 21:18 56:20 60:5 84:11 115:23 124:24 131:12 151:6 195:4 202:13 217:17 221:3 227:12 261:6 264:5 276:21,22 276:22 278:5,7 296:7 level 25:11 27:4 124:9 124:13 186:12 187:24 199:17,17 207:7</p>	<p>209:22 210:2 213:14 222:18 226:1,11,14 227:20 235:20,24 347:16 374:5 377:12 384:11 levels 40:4 44:21 78:10 144:3 170:11 198:1 242:2 301:23 358:13 leverage 219:15 leveraging 8:8 Lewis 97:23 liabilities 232:17 233:14 234:10,20 237:9 liability 232:13 lie 286:21 lies 286:22 361:14 lieu 178:9 life 48:16,17 50:4 76:21 286:24 368:25 light 15:2,6,9 206:1 316:7 liked 310:20 likes 352:25 likewise 201:24 269:22 limit 11:17 12:1 15:15 115:16 145:2 250:17 251:2 312:17,22 343:7 343:15 380:17 limitation 149:14 178:5 limitations 148:19,19 149:13 limited 112:25 149:19 158:20 199:3 202:7 253:15 299:7 limits 152:3 Lindsay 330:16,19 Linsday 4:20 323:24 line 42:20 48:13 82:12 129:20 137:19 140:23 165:12 266:19 278:15 292:23 366:9,13 384:23 lines 38:12 111:19 lining 253:23 linings 246:4 linked 359:23 Lisa 3:12,16 4:12,15 23:1 28:5,7 45:9 51:4 300:8 304:4,6 311:11 315:1,3 list 24:4 30:25 62:20 101:14 103:21 140:16 161:12 171:1,2 172:12 244:10 247:1,2 255:8 321:11 384:12,12 listed 23:22 35:20 68:7,9 70:9 257:4 listen 10:5 15:22 76:11 163:16 164:17 331:2 listened 12:17 listening 366:5 listings 31:4 literally 95:12 literature 49:14 70:3 345:15 litigated 195:25 litigation 196:7 little 15:18 23:22 24:4 26:18 29:12 63:14 65:18 72:2 93:23 94:20 95:17 104:6 116:11 118:6 133:14 142:13 148:23 157:22 161:2,22 170:21</p>
---	--	---	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

186:14 194:6 197:20 199:11 200:2,10,11 203:9,20 205:6 206:11 207:17 209:9 211:14 214:4 216:16 224:13 229:12 239:7 241:5 242:21 245:1 249:2 254:16 255:10,13 258:22 261:4 263:6 266:17 268:23 287:14 332:24 333:1 334:17 339:25 350:19 358:1 367:23 live 13:11 16:16,20 43:3 43:5 299:21 376:2 378:16 lived 43:11 Livermore 18:5 19:1,12 39:22 40:11 45:7 78:8 lives 301:5 321:4 332:18 livestock 44:22 living 264:14 287:2 load 52:17 69:5 72:19 212:4 215:7 230:10 242:3 344:24 loading 28:2 35:6 53:4 53:13 55:12 58:6,7 61:8 271:11 344:15 350:12,15 354:8 355:7 356:6 359:9,13 383:15 loads 50:1 61:11 207:25 229:15 230:17 241:25 local 29:25 30:21 39:4 43:23 78:23 105:1 229:5 230:22 301:13 308:23 315:10,15 317:14 localized 38:23 locally 194:11 315:10 locate 122:24 located 46:21 58:17 243:2 location 47:13 60:19 63:6 107:1 122:16,23 123:5 243:1 279:10,12 319:13,14 locations 50:1 56:2 122:15 236:16 logic 205:14 logical 135:21 logistic 21:16 logistics 22:18 long 33:15 43:14,16 67:1 83:6 92:11,22 177:13 177:13 178:18 179:7 185:14 186:17 202:23 207:7 259:10 264:14 276:11 279:19 280:8 299:13 308:18 321:16 328:17,18 346:6 369:13 371:14 373:7 379:15,17 longer 72:2 154:1 173:21,24 174:25 175:10,13 253:18 254:3 287:24 313:17 313:19 321:15,16,16 long-standing 256:7 long-term 39:3 92:5 168:1 185:11,16 226:8 226:17 254:23 316:11 378:8 look 39:17 42:5 56:20 58:13 60:5,11 65:10	65:12 67:20,23 83:4 88:25 96:25 115:20,20 142:20 144:24 150:19 150:22 151:2 181:4,6 190:1,11 193:4 201:25 211:24 212:14,24 213:8 220:19 226:8 237:17 242:21 248:22 250:22 263:8 288:12 300:3 306:19 307:7,11 317:11 331:3 334:9 335:5 339:21 354:20 356:22 357:11,11,24 360:4 362:10 375:20 377:4 386:3 looked 86:25 89:7 122:4 164:19 225:9 291:13 looking 45:1 46:13 48:4 60:18 78:14 84:15 85:10 121:9,18 144:16 151:19 160:6 168:3 179:4 188:17 192:7 193:2 206:22 216:11 216:14 224:5,23 226:11 235:24 237:10 237:11 250:23 267:1 268:9 287:19 291:14 362:14 386:11 387:9 looks 71:21 78:15 131:10 151:9 164:20 192:3 329:5 339:18 354:13 361:11,11 loop 101:25 Lopez 4:5 70:14,15 237:24 240:17,18,25 241:2,9,9,11,11,13,15 243:3,7,10,14,22 244:2,8,14 254:15 257:1,12 258:2,7 Lopezes 240:18 Los 4:3 14:7 17:6 91:18 96:3,23 113:6,25 126:25 134:13,15 156:12 196:11 197:12 206:8,9,14,14 214:1,6 216:2,12,16 217:12 218:8,16,18,20,23,25 219:22 220:4,11,14,18 221:1,5,7,25 222:5 223:17 227:22,24 263:12 265:3,5 274:22 275:6 276:19 277:25 292:8 293:6 294:1 295:1 310:9 311:3 334:24 339:12 354:18 356:7,12,14,17,23 357:1 359:4,21 360:5 362:10 366:22 lose 79:17 94:8 176:15 239:2 307:1 losing 98:1 loss 95:25 losses 193:1 lost 171:2 238:16,21 239:1 lot 13:11 25:9 35:12 64:19 75:18 77:15 79:3 86:24,25 87:12 87:23 95:1 97:14 99:16 100:17 106:24 131:25 132:10 136:7 144:25 149:16 150:20 151:12 157:19 176:9 179:23 192:22 203:1	203:24 204:14 205:3 207:11,14 210:10 215:5,11,12,13,22 217:2,3,6 218:11 219:7,8,13,16 223:18 224:23 225:21 226:10 245:2 246:5,13,14,15 247:8 249:5 250:18 251:16 252:5 253:7,9 253:25 259:14 279:25 288:15,16 293:18 294:17 299:15,17 327:14 334:2,16 346:9 347:1 350:2 356:18,20 358:5,14,20 359:1,22 363:12 371:12 379:13 380:23 lots 84:21 165:6 234:18 297:21 312:1 386:3,3 386:4 loud 241:7 louder 133:14 241:6 lousy 86:17 love 213:21 216:4 low 27:10 89:25 119:8 204:20 298:24 325:16 328:1 337:9 377:8 lower 46:9 47:2,2,24 48:17,24 49:21 54:23 55:21 57:8 59:19 126:16 130:22 230:15 231:19 235:24 237:11 237:14 255:24 261:11 263:20,21,23,24 264:6 264:6 311:16 336:9 357:6 359:2 363:15 lowest 24:7 52:12 58:16 349:15 low-risk 304:15 low-wage 302:1 Lu 9:7 Lucas 118:10,13,15,16 248:21 375:21 Luis 1:11 2:12,19 6:1,6 92:24 102:25 106:15 116:1 132:23,24 284:23 302:17 309:11 310:20 315:9,13 332:22 363:23 366:6 380:16 lunch 11:25 115:16,19 115:24 239:21 Lurie 4:12 304:4,6,6 lysimeters 219:14 L-o-s 206:15 L-u-r-i-e 304:7	151:20 173:15 223:6 maintains 31:22 62:11 136:7 maintenance 232:16 233:19 major 13:10 38:9 69:17 97:23 98:1,6 191:18 191:20 221:11 243:14 312:17 348:4 majority 31:4 63:24 64:4 64:9 93:2,3 97:17,19 271:7 308:20 324:22 373:20 374:1 making 28:1 32:9 111:10 114:1 152:25 179:3 200:2 205:14 212:22 215:7 262:17 269:16 312:23 349:23 354:25 355:6 361:17 369:15 Maloney 306:9 manage 96:16 120:17,22 121:2 241:16 296:10 296:16 managed 355:19,21 management 8:9 27:23 30:14 31:22 34:17 35:22,25 39:11,11 53:23 54:14 55:13 57:11 60:10,13,15 65:5,13,16 83:19 85:7 127:11 129:22,23 130:4,8,14,20,23 137:16 138:21 139:4,9 147:14,15 149:5 150:14 156:21 161:17 161:18,19 169:19,23 169:24 170:4,18 174:9 177:1 182:17 186:6,10 187:4,5,6,9,16,17,19 188:12 189:4,6,12 202:16 204:1 208:9 209:13 212:25 214:25 214:25 221:7 224:6 229:19,21,24 230:9,12 231:5,11,14,18 233:16 234:14 236:18 237:2 252:25 254:10 292:15 292:21 310:5,8,12 312:18,22,24 316:1,18 349:8 352:11 354:13 357:12 358:15 359:24 362:18,22,23 367:5,14 manager 3:12 28:5 36:6 45:22 51:2 206:22 241:3,15 258:16 331:21 357:11 363:24 managerial 324:21 managers 85:4 managing 201:24 226:10 358:5 mandate 76:14,15,15 82:8 120:8 137:22 212:21 307:22 mandates 109:20 359:15,16 manner 96:19 142:23 239:19 manufactured 243:13 manure 243:13 map 46:23 48:4 58:14 59:15 155:5,6,7 245:23 maps 46:18 189:21 Marc 4:3 113:6 126:25	156:12 196:11 197:12 206:14 274:22 292:7 293:6 295:1 334:24 Marcela 4:18 320:8 322:4 323:23 325:6,9 March 1:12 2:13,21 6:2 6:7 28:19 42:1 45:7 109:1 116:2 192:8 292:10 298:10 330:24 376:17 March/April 243:25 Marc's 311:24 margin 289:13 marginalized 286:13 Maria 46:9,17,23 47:2,12 47:25 48:12 49:22 59:8,19 125:2 208:19 237:12 250:20 263:21 263:24 264:7 272:2 316:16,19,24 322:15 346:6 Marilee 304:4 306:1 307:15,16 Marin 376:14 Marine 36:3,4 228:25 229:6 242:12 304:7 305:11 Mark 207:20 marked 250:19 market 87:24 239:7 371:8 Marketing 75:4 78:25 109:24 markets 80:2 marking 77:2 244:6 Marla 364:25 374:24 375:2 Marsh 4:10 293:11 298:21,21 300:7 Marsh's 326:2 Martin 3:23 197:3,4,4 199:1,2 219:12 Mary 4:13,24 374:24 Maryann 320:7 mask 122:18 masked 212:2 Masland 49:17 mass 49:2 344:6 master 293:22 match 166:4 219:8 247:8 matches 166:2 171:2 matching 292:21 material 18:1 19:8 157:20 271:6 materials 17:11 18:3 149:22 math 218:23 253:8,9 368:22 Matt 3:17 40:24 42:9 52:8 54:6 59:6 71:7 117:1 122:13,20 198:12 matter 11:3,11,15 12:10 12:23 201:15 268:12 279:17,18 297:18 335:17 358:19 matters 315:17 Matthew 3:13 37:21 maximum 25:10 27:3 44:16 64:9 69:5 Mayor 3:7 77:21 86:9 97:10 McCANN 3:12,16 28:5,7 28:8 42:5 45:6,11
---	--	---	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

117:13,17 118:1,3,10 118:13,15 122:21 123:8 125:4,8,10 127:5 129:21 130:2 131:4 McCCHESNEY 3:5 7:7 16:13,15,20 19:25 20:5,25 40:24 41:4,10 42:8 131:17 132:4,7 132:12 146:7,12 150:17 151:2,7,15 157:7,16,21 158:3 159:6 183:24 184:2,10 184:12,15,23 220:21 264:18,20,25 265:5 266:5,20 267:6 268:19 268:24 269:2,7,9 270:22 282:12 285:4 285:17 290:6,15 McClellan 256:19 mean 27:18 66:9 76:13 79:17 82:9 84:4,9 91:6 95:4 106:13 117:6 128:7 159:20 160:15 165:4 215:20 223:20 224:16,25 225:5 241:23 248:16 261:23 264:2 265:12 270:17 281:4 338:15 339:2 343:18 346:3,24 350:2 350:4 371:3,15 372:8 373:8,25 383:10 384:9 meaning 293:19 meaningful 35:5 305:24 means 14:16 170:2 215:2 255:1 297:21 304:14,22 305:1 328:5 328:8 372:2,7 meant 109:25 211:7 measurable 65:8 242:19 352:6 354:7 measure 47:7 130:15 198:14,16 201:6 216:23 217:21 243:22 344:21,22,23 352:5 358:17 359:11 measurement 34:15 212:5 243:20 measurements 243:23 measures 35:5 47:9 129:22,23 232:17 measuring 278:16 meat 291:2 mechanism 83:21 210:4 314:22 mechanisms 32:3 233:12 330:6 median 248:6,7 meet 24:21 31:19 32:2 32:11 33:9,16,21 53:20 56:15 89:4 91:10 94:22 139:14 140:11,13 141:12 167:5 176:1 187:15 210:1 216:3 222:12 234:13 239:17,18 246:6 288:8 293:17 386:15 meeting 12:15,18 13:4 15:18 25:22 71:12 106:14,16 107:12,16 134:24 141:25 142:2 174:20 209:17 245:16 255:12 257:10 269:3	276:9 283:4,12,19,22 283:22 301:3 325:3 331:20 349:8 373:21 meetings 128:18,19 245:10 311:20,21 365:3 366:10 meets 386:14 member 11:2,4 74:5,8 74:18,18 75:25 86:15 116:16,19 164:8,9 191:4 198:11 202:11 202:12 206:15 211:21 244:20,21 246:2 291:11 300:21 318:15 336:23 366:10 380:2 386:2 members 12:5,7,8,17 13:3 15:12,14 16:21 21:8 28:9,23 37:23 46:1 50:24 62:22 63:13 74:3 102:16,24 107:6 108:10,13,18 109:2,6,11 113:17 116:7 128:1 132:17 161:7 163:12 164:10 225:16 236:6 238:1,6 241:1 245:4,11 253:25 258:15 293:12 300:19 301:4,25 302:18 306:10 311:2,14 315:5 320:16 321:17 322:7 324:14 325:7 329:8 330:18 365:6 memorandum 167:19 mental 333:14 mention 56:6 68:5 80:13 81:17 144:4 327:13 mentioned 46:7 51:4 72:11 75:3,13 78:5,9 81:16 127:19 133:3 137:6 197:19 248:20 256:22 260:25 288:10 289:15 290:3 291:14 Mercer 4:8 191:6,11 285:22 287:11 289:23 291:9,10,16,17 merely 113:1 143:6 287:2 merged 312:25 merit 206:23 288:17 Merkley 4:8 285:21 287:11 289:23 290:17 290:18,19 Merrill 309:7 311:10,10 Mesquita 246:7 mess 224:24 message 227:19 288:21 messages 208:2 messaging 289:18 met 33:12 93:21 112:9 166:8 207:9 222:12 245:5 324:23 352:13 method 371:18,19 methods 39:13 Methyl 320:20,22 metrics 352:13 Mexico 87:14,16,19 94:5 95:16 Meyers 87:16 Michael 3:8,11,18,22 4:10 6:22 7:6 22:2 62:20 63:1 107:23 120:4 293:11 298:10 298:21 365:8 374:25	385:21 micro 87:22 199:17 microphone 21:8 244:15 microphones 16:15 mid 49:11 middle 126:17 192:8 196:6,9 226:2 311:22 349:10 381:6 383:24 midnight 240:21 386:3 mid-1996 118:23 Migra 94:2 mike 3:7 4:4,22 6:20 10:25,25 238:2 241:4 241:10 308:4 363:19 363:20 mile 125:4,5 279:14 317:15 mileages 239:14 miles 27:3 247:12 379:8 milestone 350:1,9 352:9 milestones 31:24,25 61:17 140:10,13,16,17 140:19 203:4 million 30:6,7,10 37:25 43:14 92:25 105:4 315:10 329:20 331:22 375:8 380:16 millions 24:20 25:2,18 32:13 67:14 72:21 303:2 mind 12:23 13:6 23:8 98:18 120:25 166:23 217:7 283:5 287:25 322:25 387:8 mine 274:11 minerals 44:9 minimize 37:9 139:5 234:10 308:21 minimized 137:24 minimizing 198:6 minimum 171:18 211:10 324:21 349:5 minister 301:2 330:20 ministries 330:22 Ministry 300:14 329:3 330:21 minor 152:15 minorities 97:18 100:14 minority 100:20 minute 14:17 27:12 241:14 246:11 247:18 312:7 371:22 minutes 11:21 14:4,5,6 14:8,9,10,11,12,14 15:7 73:13 116:10 131:20 165:21 174:14 182:25 183:1 194:8,9 194:13 195:1 197:15 208:18 228:21 240:24 254:14 259:2,3 260:8 269:23 277:10 281:25 282:1 291:13 298:12 298:13,15 306:14 307:13 mischaracterize 295:14 misconception 135:10 136:25 137:11 139:3 140:22 141:5,17 142:3 142:9,15 313:13 327:25 misconceptions 135:7 366:17 mismanage 357:7	mismanagement 27:7 333:12 missed 203:19,25 missing 205:19 357:9 362:11 mission 23:6 69:20 195:10 259:4 332:15 Mississippi 74:15,15 Mist 311:15 mistakes 364:18 mistrust 318:22 mitigated 203:1 mitigation 350:22 351:1 mix 48:22 122:5,7 mixed 281:23 mode 198:2 model 36:22 77:4 113:7 208:11 247:19 360:17 models 85:10 moderate 52:24 54:21 59:1 modernizing 120:25 modification 147:2 204:20 modifications 106:10 154:9 330:7 modified 145:20 205:7 modify 11:13 127:21 128:4,5,9 modifying 128:3 moisture 357:14 Molera 230:4 236:6 moment 76:8 116:9 158:12 185:13 189:16 245:8 276:17 329:15 money 82:24 212:22 218:11 219:8,13,15 232:23 237:14 238:25 239:3 247:20 358:11 368:9 372:19 Monica 3:6 6:18 9:6,13 10:24 342:22 343:2 362:5 379:9 385:16 monies 235:10 monitor 33:10 54:9 65:14 96:9,14 98:13 100:24 197:24 301:23 316:23 361:6 monitored 47:3 249:15 253:2 275:7 314:22 monitoring 10:18 28:1 30:17,20,22,23 32:20 34:22 35:9 46:19,25 53:24 55:11 57:9,14 57:22,23 58:1 60:9,21 65:6 85:21 90:19 98:6 98:8,18 101:9 122:15 141:12 142:4,6 153:18 153:18 154:6,12,22 173:10,13,14 178:8,9 178:12 180:4,5 187:1 189:5,6 195:12,12 197:25 200:13 214:10 214:14 232:16 233:1 241:17,19,21,25 242:14,16,20 243:1,9 250:1 252:10 255:4,8 273:24,24 274:2,5,6 277:2,3,12,18,19,21 278:11,16,19 279:2,3 279:4,9,19,21 280:6 289:1,4,11,15,17 291:22 293:19 294:13 296:11,22 297:3,8,9	297:15,16,19 298:2,6 301:20 312:11 314:11 316:20 319:12 321:21 321:24 323:13,16 344:18 362:17 365:15 367:15 372:17 Monitoring/Basin 45:23 monte 201:4 Monterey 35:24 36:4 49:15 74:6 75:20 87:7 89:7 91:8 93:1 110:18 114:24 118:7 132:23 164:2 168:17 191:5 206:16 229:5,23 230:4 235:13 242:10,12 245:24 250:15 258:16 260:13 275:12 295:7 304:7 305:10 month 126:24 243:22 247:6 248:4,14,15 331:23 months 81:13 102:22,23 104:2 105:15,20,20 108:13 128:8,21 134:18 166:25 169:5 179:4,10 215:21 217:9 244:3,4 288:19 297:5 361:21 moral 286:16 Morales 4:18 320:8 322:4 323:23 325:6,7 325:9 Morgan 42:12 morning 6:4 8:1 37:23 46:1 50:24 63:12 92:19 102:8 107:9 129:1 249:3 282:8 284:20 295:5 310:16 328:15 365:9 Morro 250:19 317:6 375:7,22 Morrow 131:21 317:13 317:18 Moss 228:25 mothers 90:5 mountain 308:3 moustaches 290:20 mouth 47:13 move 9:19 15:3,10 21:13 28:3 63:7,10 64:6,7 66:17,22 70:6 95:16 131:12 136:8,24 201:13 202:13 237:19 239:11 245:22 256:14 258:23 276:21 292:19 299:10 305:23 326:16 326:18 336:22 338:2 349:6 350:1,9,16 moved 87:16 279:13 288:17 336:9 movement 357:17,18 moves 209:2 278:12 280:1 moving 58:25 172:20 192:7,18 239:24 248:11 254:9,11 278:17 286:24 288:3 339:4 357:3 374:15 376:21 MPS 205:15 277:6 MRP 138:12,20,23 142:20 153:18,21 154:2,3 297:3,15 MRPs 133:10 154:11
--	---	---	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

177:15 multiple 24:16 28:22 29:5 46:14 48:10 49:7 70:2 230:1 231:17,20 238:5 293:22 357:22 365:15 370:13 multi-billion 202:9 Mundos 5:3 374:24 municipal 26:18 44:1 204:12 379:23 municipalities 24:20,25 286:22 municipality 276:1 music 9:8 mutual 91:8 134:24 myriad 113:2 M-a-r-s-h 298:22 M-a-r-t-i-n 197:5 M-o-r-a-l-e-s 325:9	101:7,7 146:4 147:21 150:24 154:19,19,23 155:8 156:4 158:10,23 167:2,5,21 169:16,23 170:25 173:4 175:8,11 181:11 182:17 184:20 194:25 199:23 201:17 203:11 204:14,14,25 207:4,9 209:15 211:21 212:14 219:4,9 226:8 226:13,16 232:4,7 233:15,17,18,21,22 235:7 240:19,22,23 241:5 249:6 252:11 257:20 267:11,12 275:7,7,8,8,24 276:6,8 276:8 279:4,20 284:5 287:3,24 303:20 310:4 310:23 311:5 312:20 313:23 314:22 326:23 332:1 341:20,22 343:4 344:25 345:7 350:6,13 358:14 359:2 361:9,22 361:22 363:2,10 369:20 370:15 371:21 374:15,19 376:20,25 386:24 needed 14:12 21:25 78:21 198:23 300:23 300:23 330:7 378:25 needs 14:7 44:8 137:8 157:10 181:8,12 194:11 197:24 279:4 303:4 306:18 331:8 345:9,18,19,22,25 346:4,8 363:5 negative 13:14 20:16 negotiable 86:3,4 negotiate 71:24 72:1,2 84:12 222:25 negotiating 72:5 222:7 negotiation 144:22 222:20 neighbor 100:17 neighborhood 329:20 neighboring 233:7 neighbors 315:16 neither 110:22 195:23 201:22 388:13 net 88:5 195:20 neurologically 321:11 never 84:17 85:15 98:10 137:6 171:4 247:3 276:15 347:23 381:17 new 12:7 17:11 43:14,15 54:7,18 55:7,10 60:25 61:3,18,24 79:12 85:8 96:10 98:14 108:10,13 109:1,6,11 110:4,11 112:1,15,24 144:14 146:4,5,10,12,16 147:4,11 151:7,9,10 154:10 156:8 157:14 159:14 160:6 161:14 161:16 162:5,8,9 164:6 167:14 169:17 169:18 170:8 171:8 173:8,9 175:15,16 199:12 204:2 247:10 249:19 264:23 265:24 266:2 268:7,10 302:3 308:2 331:11,21 332:8 333:15 340:11 350:3 361:25 373:10 377:25	378:1 news 39:7 249:9 310:9 nice 221:1 357:20 381:25 nickel 349:18 night 167:10 306:12 307:9 nightmare 100:1 nights 225:22 317:16,17 nine 75:9 288:18 367:21 368:1 ninth 78:18 nitrate 23:25 24:3,3,23 25:9 35:6 37:7 38:6,10 38:14,18 39:2,11,23 39:24 40:2,3,4,7 42:15 42:18,22,24 43:7,16 43:20 44:7,17,19,20 44:22,24 48:5 49:12 49:16,23 55:12 58:4,6 58:7 61:2,8 75:14 91:14 116:21 119:3 120:1 144:2 189:22 214:25,25 226:25 243:10 248:24 249:17 250:23 251:1,11 253:7 256:8,23 257:5,6 259:9,10 260:1 261:24 263:23,24 267:17 270:25 312:19 317:12 339:8 343:2,3 344:15 344:18,24,24,25 345:6 347:13,15,16 350:25 351:5 354:7 355:7,20 356:6 357:8 359:9,13 360:7 362:11,23 375:6 377:12 383:15 nitrites 85:21 116:24 117:25 118:5,18 119:1 169:21 190:5 197:24 198:7,15 207:9 243:9 243:12 249:6,14 256:25 257:5 258:1 259:15 280:11 301:14 301:23 310:2 321:10 331:9 336:11 351:19 358:5 359:1 380:17,19 nitrogen 24:23 42:15 52:17 53:4,13 58:10 206:19 207:2 227:2 241:22,25 242:1,2,3 312:23 334:18 342:5 343:7,15 345:7,19 347:10,14 348:11,14 351:8,10 352:6,18 354:7 355:20 357:2,3 357:11,15,15,18 358:15,16,18,20 359:2 360:24 361:5,7,9,22 368:4,5 369:25 370:24 372:19 nitrogenization 358:18 noise 7:18 noises 16:22 noncompliance 198:2 nonexistent 199:3 nonnegotiable 83:17 84:13,19 nonparties 99:4 nonpoint 29:17 31:10,12 31:14 33:13,20 34:3 34:25 36:12 180:16 Nonpoints 182:2 nonpolluted 308:7	nonprofit 195:8 320:12 324:3 nontoxic 226:24 noon 11:25 73:2,3 Norm 4:9 289:24 293:10 295:4,6 normal 243:25 north 25:12 note 106:13 125:19 129:9 167:24 328:2 346:4 noted 182:4 notes 15:23 22:10 129:5 319:21 388:12 notice 8:8 11:20 53:21 55:3 58:17 59:4,14 60:19 64:4,6,6 126:6 126:18 128:2 147:13 154:20 166:3 175:12 179:10 183:11 199:22 257:7 283:21 385:10 noticed 256:19 283:18 Notices 57:2 notified 171:3 notwithstanding 139:13 November 102:16 105:22 number 9:20,24 11:22 17:25 19:5 23:5 38:21 70:4,9 79:21 108:6 110:20 111:4 112:4,6 112:25 116:20 137:4,7 137:11 145:2,7 158:20 162:6,7 171:23,24 174:2 197:17 208:23 224:14 226:10 253:13 269:6,6 274:13 292:2 292:3 298:17 324:7,9 327:20 336:14 341:20 341:24 346:1,24 352:3 352:23 353:14 368:16 370:17,17 371:1 numbers 117:20 126:2,4 126:22 143:18 191:12 262:12 341:25 347:3,4 347:5,7 348:21 367:7 368:22 370:7 numeric 143:13 numerous 13:12 26:24 38:12 58:5 232:20 324:19 nurseries 58:22 59:12 nursery 59:24 nutrient 24:21 27:23 30:14 55:14 56:16 61:13 119:10 143:21 144:2 161:17,18,19 169:19,22,24 170:4,11 179:15 182:17 198:7 229:15 230:10 252:25 271:11 310:4,8,12 312:17,18 352:3,11 353:4 354:6,12 355:20 360:6 367:5,14 nutrients 24:19 31:6 169:21 272:20 nutrient-rich 271:16 nutrition 333:22 nutritious 79:9	6:6 102:25 106:15 116:1 132:23,24 284:23 302:18 309:12 310:20 315:9,13 332:22 363:23 object 225:3 objection 21:1 268:6,13 objections 17:5 18:16 objectives 31:22 32:2,8 32:11 33:10 44:12 66:25 67:3,5 85:25 91:3,13 114:23 143:12 143:13,14,16,16,24 144:2 153:25 177:22 191:19 224:15 230:1 231:2 233:17 234:14 255:12,20 256:8 322:23 obligation 71:14 180:25 240:14 378:6,11 obligations 104:23 167:17,17 obscure 323:1 observation 199:18 332:24 observations 199:10 observed 168:4 obtain 316:11 obtainable 309:2 obvious 333:8 344:6 obviously 43:24 65:10 87:20 122:5 129:25 173:12,17 178:24 196:4 296:1 310:25 322:16 occasions 13:12 occupy 337:23 occur 198:16 258:1 occurred 40:9 112:16 occurring 138:3,10 occurs 153:4 182:19 ocean 125:2,5,10 305:6 311:15 322:16 ocifer 252:12 ocifers 249:16 October 17:22 19:4 179:6 297:14 298:3 361:1 offense 67:6 198:18 365:9 offensive 239:19 offer 64:8 86:14 offering 277:16 offers 304:22 office 12:22 36:7 74:19 101:24 102:6 105:8 283:20 306:8 385:16 officer 3:11,11 7:6 73:10 107:24 135:24 136:6 136:15 147:23 156:1 161:3,5 167:3,7 168:22,24 169:16 172:22,22 174:17 178:3 184:3 290:8 353:8 Officers 15:12 68:11,12 Officer's 153:9 174:21 177:23 290:11 offices 35:25 official 11:5,8 officials 13:12 99:10 103:4,19 115:15 129:1 offset 233:14 oh 6:9,11 9:25 50:12,15
N				
N 3:1 4:1 5:1 name 7:14 22:2 50:25 74:5 92:23 132:17 173:22 191:3 194:21 194:21 195:5 196:20 197:4 206:10,14 228:23 238:2 241:2,9 241:11 244:16 258:15 260:12 283:6 286:1 287:15,17 291:17 295:6 298:21 300:10 306:23 309:9 318:7 320:9,10 327:7 332:21 333:20 365:7 388:17 named 361:12 names 34:8 335:10 Narrative 143:11,13 Nathan 4:7 159:4 196:21 285:20 287:11,15,17 nation 9:2 77:4 92:15 105:2 133:25 327:21 national 36:3,4,22 39:22 77:9 91:11 229:5 242:12 304:7 305:11 nations 74:21 330:24 native 67:22 naturally 138:3,10 365:21 nature 109:11 243:12 338:7 372:16 Navidad 299:24 nay 163:17 NCL 249:17 257:7 NCLs 249:18 near 49:16 52:15 53:1 317:10 326:17 381:20 nears 149:14 necessarily 161:10 189:12 200:8 222:1 226:15 250:22 279:24 280:6,7 290:24 292:25 309:24 339:9 373:19 385:8 necessary 27:5 32:11 34:24 144:18,24 152:3 153:20 174:11 225:14 255:18 342:7 need 16:23 22:5,8 32:6 37:9 41:17 44:25 64:1 66:17,21 67:7 68:19 69:1,2,10,18 70:6,21 76:25 81:6 86:14 88:16 90:10 96:13				
O				
oath 224:9 oaths 388:6 Obispo 1:11 2:12,19 6:1				

A6028BD
PANEL HEARING MARCH 14, 2012

<p>77:5 202:12 236:15 240:17 255:10 262:12 290:18 298:14 338:9 378:15 oil 386:3 Ojai 49:2 okay 6:11 7:1,23 9:11,19 10:15 13:25 16:20,25 21:4,10,13,17 22:11 22:24 41:19 45:13 46:3,4 49:21 50:20 63:2,11 72:25 73:3,13 73:24 80:25 86:5 91:22 92:18 97:22 99:1 101:18 102:1,4,6 105:11 106:7,12 107:4 115:14 116:14,16 118:16 119:6 120:3 121:4 124:17,23,24 125:12 126:24 128:24 131:9,10,21 132:12 133:17 145:5 146:7,10 146:17 147:1 151:4,15 151:17 158:6,9,14 160:13 163:19 164:4 164:23 165:1,9,17,19 165:20,23 182:23 183:1 184:23 186:1 189:17 190:16,23 191:3 194:4,16,24 195:2,4 197:2,3 199:5 202:13 206:7 221:5 225:18 228:9,21 235:19 236:3,4 240:17 240:19,23,25 243:6 244:5,9 248:15 258:9 258:10,25 267:4,10 270:2,5,15,16,23 273:9 274:25 278:24 281:7,10,17 282:17 283:6,8 285:15,19 287:11 290:16,17 291:16 298:14 314:16 314:25 330:10,11 334:18 339:18 342:4 343:18 351:21 352:13 356:16 360:10,11 361:3,12,23 362:9 363:1,2,3,17 368:5 369:7 372:14 373:1 376:8 378:20,21 383:2 383:18 384:4,14,18 385:20 387:6,6,14 old 49:1,17 90:21 118:19 119:17,22 199:12 230:6 243:17 271:9 280:16 287:21,23 omissions 331:11 once 10:11 28:12 41:19 64:13 100:13 115:19 189:4 243:22 252:1 262:1 273:3 288:1,11 onerous 80:16,20 84:25 110:17 365:20 ones 54:16 95:2 101:5,7 170:5,19,20 172:10 273:13 333:7 373:24 ongoing 38:14 78:11 222:20 255:19 online 54:13 63:19 95:5 100:4 120:15,18 on-farm 112:2 214:10,14 219:2 293:19 on-time 31:24</p>	<p>open 12:23 13:6 113:22 256:14 293:13 343:17 opening 10:12 open-ended 135:23 136:14 operate 238:25 324:22 operated 202:11 operation 57:19 87:16 105:24 126:12,13,23 135:17,23 136:10,12 136:13 150:11 198:22 318:9 355:19,24,25 367:21 368:2,3,18 370:21 371:21 379:9 operations 34:8 37:18 66:12 67:25 126:9 170:22 198:20 253:12 264:13 279:5 311:16 Operation's 37:2 operator 122:19 317:7 338:25 operators 294:12 295:21 opinion 66:14 110:9 130:16 196:6 220:3 224:24 273:15 275:12 290:12 368:11 386:21 opinions 84:6 366:11 387:1 opportunities 234:22 299:4 opportunity 14:22 18:19 19:16 23:16 28:22 73:18 92:21 93:10 97:3 108:19 142:7 148:1 150:21 162:18 163:2 177:11 203:19 204:1 205:22 229:1 230:23 231:20 233:3,6 234:7 235:15,25 237:18 250:7 268:15 298:4 300:12 301:7 305:16 311:22 312:7 347:12 374:20 377:1 opposite 366:12 opted 198:19 optimist 284:4 option 131:1 134:24 142:8 147:17 154:20 154:24 155:1,23 166:1 178:1,2,5,7,11 210:4 295:21 350:5 options 154:25 159:15 299:7 oral 11:14 265:5 268:14 orally 156:13 oranges 131:6 orchardist 310:18 orchards 58:21 59:11 67:22 Ord 76:1 order 11:13,16 13:20 16:21 18:13,14 19:14 20:9,10,10,13 23:4,10 23:14,24 27:10,16 28:4,11,17 29:6 33:21 34:19 35:2,12,14,15 35:19,24 36:8 37:5,6 37:14 51:9,15,18,25 52:4 53:16 54:12,19 55:5,7,19 56:1 57:3,16 57:25 58:3,9 59:3 60:21,24 61:24 62:1,3 62:7,10,16 63:16</p>	<p>64:14,20 65:3,24 66:6 66:13 68:3,4,18 69:9,9 69:10,11 75:4 77:2,10 77:17 78:25 81:6 83:10 86:16,21 87:2 98:4,7 102:17,20 104:20 105:15 107:21 108:7 110:5,11 111:16 111:20 112:15 113:12 117:3 120:5,7,8,15 124:8,13,15 126:8 127:3,4,8,9,14,21 128:3,4,6,16,21 130:4 130:5 131:1 133:9,10 135:13,18 137:12,13 137:15 138:2,24 139:4 139:7,13,16,22,24 140:1,4,9,21 141:6,8 141:11,15,18,20 142:5 142:10,11,13,16 143:8 143:14,21,22 144:14 144:20 145:1,5,6,14 145:16 146:20 147:3 148:24 149:22 150:8 152:22 153:8,11 154:25 156:1,6 160:20 162:9 163:9 164:11 165:24 166:6,22 167:4 168:14 169:2 170:7,10 170:12,19,22 171:9,17 171:19,20 172:25 173:11 174:1,11 175:8 177:10,17,25 178:2,22 179:16 180:10 181:16 181:25 183:3,9,25 184:2,18 185:1,5 186:23 188:14,15 195:24 196:10 201:14 201:16 203:10 210:6,9 210:9,24 214:3,8 215:1 216:10 217:18 237:23 249:2 251:7 252:1,3 255:2 258:13 259:16,21 268:12,16 272:12 274:17,23 275:2,25 276:8 290:4 290:14 291:23 293:1 295:11 296:14 304:11 304:16,25 305:2 309:1 309:16 311:19,20 312:16 313:14,17,19 313:21 322:11 324:21 332:5 333:8,16 341:2 342:5 343:7 346:22 349:1,4 350:15 354:15 355:22 360:17,19 363:6 364:4,5 367:3 370:24 373:10 374:7 374:12,14 375:14,18 376:20 385:5 386:9,10 386:12 orderly 11:16 14:24 15:16,20 orders 57:18 69:7,7 130:4 141:10 144:15 182:3,5 183:10 344:3 Order's 109:20 140:5 ordinance 24:19 ordinances 76:7 152:10 organic 79:2 149:22,22 150:1 195:15 358:19 379:9,19 380:1 381:5 381:19 383:10,14 384:4</p>	<p>organism 47:7,8,9 organisms 47:10 organization 132:20 167:11,19 223:7 244:20 299:15 300:16 309:13 315:14 320:12 322:13 324:3 organizations 35:13,13 35:17 237:1 320:15 organize 89:4 organizer 320:11 327:8 327:9 original 134:14 154:6 156:25 161:6,21 243:9 originally 145:9 153:16 203:17 ors 382:14 383:5,8 Otter 14:10 260:13 ought 77:5 91:2 223:11 outcome 193:17 305:21 388:15 outcomes 193:24 outgrowth 106:16 outline 16:3 outlined 23:17 37:4 109:24 111:20 outlines 16:1 outlying 317:10 outputs 271:6 outreach 29:25 33:5 99:20 outset 112:23 175:20 outsider 224:22 outstanding 8:5,22 9:16 223:9 234:19 235:16 overall 230:10 356:5 357:5,12 overcome 322:25 overestimated 130:16 overgeneralizations 259:19 overlap 127:4 overnight 75:6 76:18 overregulate 87:5 overregulated 238:11 overregulation 238:16 overstepping 222:1 overview 23:9 overwhelmed 22:6 overwhelming 38:12 333:25 334:10 overwhelmingly 257:15 334:25 owner 122:19 319:14 338:24 owners 24:13 43:22 oxygen 119:8 o'clock 285:3</p>	<p>306:15,20 307:7 382:8 382:10 pages 201:25 266:25 386:4 paid 245:16 247:6 329:7 pan 329:23 panel 1:10 2:11 107:19 272:16 panelists 113:9 paper 85:4 100:3 103:13 159:1 184:20,21 326:23 339:18 paperwork 84:24 95:5 215:11 308:13 365:15 365:19 paragraph 137:14 138:2 139:23 140:25 145:6,7 145:18 147:3,5,11,22 148:6 149:15,16,17 151:17,25 152:13 153:5,6,16 154:15 175:5,15,15 176:12,12 176:16,21 177:15 Paragraphs 176:20 parallel 32:25 204:24 parallels 324:7 paramount 71:22 paraphrase 203:15 parcel 187:10,12 334:14 334:15 381:14 parcels 183:13 217:24 380:22 pardon 204:14 parking 147:4 Parks 36:2 part 16:7 18:15 20:1,6 20:10,13,20,21 23:5 25:12 45:12 54:2 56:18 76:20 78:11 79:5,11 80:20 91:7 105:12,13 115:12 117:4 118:6 130:23 145:14,21,22 146:13 146:14,22 147:17 149:6 151:7,8,13 154:3,19 155:6,19,19 156:23,25 160:6,23 161:20 162:2 164:12 165:23 166:6 167:21 169:7 171:14 175:13 177:11 183:20 187:4 187:16 199:13 212:11 218:25 224:4 236:19 262:6 263:4 266:23 272:16 273:12 294:1 299:14 302:20 314:10 338:18 346:12 348:4 353:11 354:4,12 357:9 357:10 381:13 Parte 10:10 participant 173:24 participants 34:8 108:17 109:21 112:13 172:12 participate 11:3 83:21 175:10 353:25 participating 10:2 171:23 233:13 304:16 353:21 participation 353:15 particular 46:16 58:7,19 74:13 87:1 119:20 154:17 197:17 206:18 286:3 314:9 324:25 particularly 36:23 38:18</p>
--	---	--	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>47:11 49:21 205:15 252:12 284:2 295:14 295:15 300:19 301:14 377:8 387:2 particulars 13:19 parties 72:16 95:22 120:20 150:22 158:7 203:25 204:5 266:10 304:9 305:23 partner 233:6 236:25 237:16 342:16 partnering 325:19,22 partners 229:13 294:23 315:6 partnerships 316:10 parts 59:19 121:17 147:12 154:2,2 177:24 192:1 346:4 party 157:22 158:5 175:7 277:20 388:14 Paso 315:4 pass 195:24 222:10 227:20 275:15,24 276:3,8,9,13 299:20 308:10 330:2 386:12 passed 142:20 222:10 238:17 passion 76:9 276:10 pastor 300:22 pastorial 300:23 path 90:13 pathway 112:23 Patrick 306:9 pattern 48:5 pay 43:10 247:24 248:11 301:22 327:17 369:1 paying 43:4,9 226:21 248:3,10,13 357:14 358:3 pays 315:10 PCA's 219:5 penalistic 77:1 79:4 80:13,15 penalized 237:4 295:23 penalties 80:14,19 penalty 80:17 363:5 pending 66:15 Penn 206:18 people 12:25 13:13 15:7 22:19 37:25 38:16,19 42:21 43:3,8,11 66:24 68:7 70:5,21 71:12 85:21 86:25,25 88:15 90:1,5,10 91:6 92:25 99:4,24 100:6 101:23 105:5 107:8 120:5 123:20,22 154:20,23 154:25 155:22 163:14 165:24 171:2 183:10 184:25 189:7 194:12 194:20,25 195:21 201:21 205:4 215:12 219:12 221:19 223:24 226:10,18 228:19 237:23 245:9 246:6 251:22 254:5 261:8 262:22 264:15 268:1 272:4 275:16 276:7,23 278:10 279:11 281:23 283:18 284:2 298:15 298:18,24 299:5,6,12 301:11,14 302:11,19 320:19 321:4,8 326:12 329:17,24 334:11,20</p>	<p>339:16 344:1 347:1 358:13 364:9,17 369:20 374:18 376:23 377:22,23 379:23 380:23 people's 272:20 299:17 302:24 peppered 202:1 Pepping 3:23 194:14 195:5,5 percent 8:20 38:4 46:12 47:15 56:23,24 60:3,4 68:10 74:22 110:14,16 121:12,13 125:18,19 125:20 137:2,4,5,9,10 141:18,21 142:2 149:2 156:7 171:11,17,19 211:10 218:1,2 227:3 227:4,5 248:6 249:15 249:18 250:18 263:8,9 301:15 310:10 326:6 326:12,12 335:23 336:5,10,14,17 337:21 337:22,24 338:5,6 340:14,25 341:3,7,10 341:20,21,21,24 342:5 342:11 347:17 361:15 361:16 367:9 373:9,10 373:18 374:8,10 378:18 379:9 380:1 percentage 38:2 62:12 62:14 111:13 121:11 340:13 percentages 125:16,23 137:2 percent-type 122:6 perchlorate 25:8 percolation 141:2,4 340:1 Perez 225:22 perfect 85:15 326:18 374:14 376:20 377:11 377:13 performance 8:5 performed 186:7,8 performing 278:17 period 17:15 18:2,9 30:9 40:13,23 41:24 64:23 188:7 202:24 222:8 241:24 243:21,25 255:17,25 256:3,10 290:7 294:11 297:23 311:19 312:12 periods 29:1,4 38:24 244:2 Perlas 4:17 320:8,10,10 permanently 376:3 permission 93:4 99:14 permit 64:24 92:6 205:15 232:5 233:2 234:18 262:21,22 permits 31:16,17 64:24 232:19 permitted 262:24 permitting 31:13 152:9 perpetuate 323:10 person 50:16 106:21 188:11 253:21 266:14 319:16 354:4 385:1 personal 42:19 253:22 299:21 328:2 378:5,15 personally 225:15 294:17 385:1 personas 22:15</p>	<p>persons 3:10 11:19 person's 290:25 361:4 perspective 24:5 216:13 216:13 235:5 pertaining 10:3 119:22 204:7 perused 159:18 pest 340:16 pesticide 47:18 188:4,6 188:6,14,23 213:13 219:6 253:4,15 320:12 321:23 381:18 pesticides 31:6 47:19 53:11 61:4 149:23,25 150:2 308:21 320:17 321:10,13 380:22 381:10 pests 110:1 petition 140:1 148:12 274:19 290:9 Petre 300:10 Petroleum 307:5 petty 153:25 phase 19:23 phenomenal 81:2 phone 63:24 phones 7:17 phosphor 52:14,25 53:9 76:5 340:20 383:7 photos 291:11 pick 45:9 217:17 285:4 346:24 picked 94:1 355:23 picking 276:2 pickings 308:19 Pickman 320:7 picture 70:14 190:11 296:8 362:12 pie 272:19 273:9,11 piece 94:20 159:1 225:6 225:7 338:11 359:25 382:25 pieces 127:23 pilot 235:19 236:19 364:19 pilots 364:8,10 pin 370:17 pink 48:11 pinpoint 323:14 place 10:15 18:16 69:16 85:8 106:14 141:9,10 185:9 202:1,23 221:13 226:19 227:6 235:25 298:3 309:22 313:19 318:17 330:5 331:20 333:4 370:11 388:8 placed 136:8 181:8 197:23 places 67:13 192:17 198:1 263:14 314:4 320:4 324:25 plain 139:16 274:2 277:14,16 plan 44:12 53:22 55:13 55:17 58:11,12 60:10 60:11,13,15,17 69:13 69:14,17 79:13,13 129:10,15 130:21 137:23,23 138:5,15,18 138:23 143:17,23,24 149:12,18 152:14 161:4,20 169:7,9,10 172:6,22 179:19 182:2 185:24 186:10 187:4,5</p>	<p>187:16,17,19 189:4,6 202:14,15,16 204:25 211:4,4,5,9 214:25,25 232:9 252:25 253:15 324:2 340:24 352:3,11 352:12,17 354:13 357:12 362:21 365:22 366:21 367:4,5 plane 197:22 planning 3:13 45:23 69:13 229:25 233:11 235:9,12 plans 61:13 62:17 71:23 78:24 138:14 152:17 184:3,6,17,25 187:11 187:12 207:24 232:21 233:19,20 310:5 312:18 353:4 354:6 367:14 plant 337:24 338:3,5 340:15 341:11 342:6 351:7 375:9 plants 25:2 67:23 147:14 205:17 237:6 340:15 348:5 plaque 9:12,12,13,14 plaques 9:3 plateau 106:19 play 92:13 300:4 315:25 playing 321:9 please 7:13 9:7,9 11:23 12:3 15:8 41:18 45:25 77:8 78:2 90:12 115:22 190:25 194:21 220:20 246:10 258:22 287:6 288:3 293:6 295:1 296:13 313:9 320:3 326:23 330:2,14 333:16 348:24 377:10 pleased 304:20 pleasure 90:15,20 102:11 285:25 plenty 22:20,21 249:10 381:13 plethora 364:1 plot 354:18,20,25 plume 25:21 plumes 25:12,20 27:1 120:2 plus 106:21 107:2 297:11,13 pocket 163:11 podium 40:19 164:1 Poins 226:2 point 19:19 22:3,7 26:10 28:12 48:21 55:25,25 56:6 63:25 64:5 97:23 98:1,7 104:14 125:6 137:19 148:2 152:21 160:10 163:6,15 176:8 188:15,23 190:9 204:7 209:7 215:24 230:18 239:20 242:20 248:2 250:2 265:25 274:20 277:2 278:3 282:3 290:1 293:4,18,20 295:9,12 305:8 306:17 322:19 326:9 354:15 355:1,9 359:12 367:11 369:12,20 372:7 373:5 pointed 43:13 71:7 76:13 109:22 137:3 140:12,25 287:23 pointing 263:21,23</p>	<p>points 115:13 138:16 150:11 200:21,22,23 208:22 289:10 351:25 poison 328:9 polarize 195:21 policies 62:17 70:12 71:23 231:4 policy 29:18,18 31:9,11 31:14,25 32:12,18,24 33:2,7,13,17 34:3,25 70:9 72:8 99:5 109:5 143:21,25 172:6 174:6 180:17 181:4 182:2 216:13,15 225:24 277:6 320:11 386:21 386:23 387:3 political 76:11 86:10 226:15,16 276:12 politics 76:21 plant 229:15 230:17 pollutants 31:3 207:25 pollute 198:21 polluted 38:10,18 42:24 43:15 384:10 polluters 307:20 pollution 26:11,20,25 29:17,21 31:10,12,21 33:20 34:18,23 35:7 38:6,14 40:5,7,9 42:17 42:23 43:7,20 68:21 69:8 70:4,16,17 72:4 72:19 78:9 115:1 116:21 123:23 212:3 215:7 216:23,23,25 217:3 251:11 270:25 271:21 301:22 302:2 323:11,14 364:1 375:6 375:24 376:12 pollutions 66:19 ponds 140:23 poor 49:4,24 245:11 286:9 pop 379:15 population 43:20 286:8 286:14 populations 251:20 286:12 303:3 port 354:22 Porter 274:22 Porter-Cologne 71:1 124:1 180:23 181:3 225:24 273:1 portion 43:5 108:3 221:12 243:11,17 282:2 portions 38:9 43:19 148:4 233:4 Port's 275:5 poses 37:11 Poshman 3:20 102:8 105:7 position 84:5 206:4 269:22 270:7 285:10 299:2 positive 97:1 106:1 292:11 325:16 386:19 possession 378:5 possibilities 229:20 possibility 95:25 235:10 350:16 possible 39:6 65:17 109:12,12 110:3 127:24 138:7,9 169:4 198:8 199:21 245:1</p>
--	--	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>287:8 353:19,20 372:10 386:10 possibly 9:2 67:11 85:15 95:2 198:12 post 237:8 postpone 332:9 postponed 108:25 posture 287:16 post-appointment 12:21 potential 16:3 104:7 127:20 149:6 154:21 193:15 198:20 212:3 251:12 287:20 305:8 340:4 348:23 357:16 potentially 38:17 209:5 288:17 333:14 335:4 349:2 pounds 242:1,3 341:11 341:12 343:13 345:17 345:25 346:2 348:11 poverty 245:17 power 71:3 260:3 PowerPoint 190:12 practical 109:7 177:18 279:17 practice 30:14 31:22 33:24 35:7 52:21 53:23 54:15 56:9 67:18,20 138:21,25 170:2,2,13 173:3,6 177:1 179:17 204:1 211:8 212:6,6 214:17 218:3,6,7,9,17 221:7 224:6 304:19 330:9 354:23 357:5 358:6 382:18 practices 27:18,19,19 33:9,11 34:17 56:10 61:9,10 65:6,14,16 67:8,10,16 83:20 84:20 85:7 96:10 98:14 109:18,23 127:11 129:16 130:9 130:20,23 137:16,22 139:5,9 142:4 147:15 149:5 150:14 156:22 170:6,19 172:9 173:5 174:9 186:6 187:6,9 188:12 189:13 195:15 208:9 209:13 211:22 212:25 213:5,9 226:23 227:12 229:22 230:9 230:12,16 234:23 242:19 261:19 292:7,9 292:15,21 315:23 331:4 359:24 362:14 362:18 365:14 practicing 333:21 371:16 Pratt 316:13 317:2 precarious 299:1 precious 114:25 301:9 precise 56:2 predetermined 104:9 317:14 predict 129:24 216:16 predominantly 29:10 58:20,23 59:7,10 prefer 63:5 265:10 prejudice 158:4 prejudiced 158:10 prejudicial 17:12 18:18 19:8,18 preliminary 41:16,25</p>	<p>45:6 prepare 60:12,14,17 185:24 187:4 prepared 12:9 20:12 71:2 116:12 131:12 233:24 234:12 284:24 368:18 prescribe 357:4 prescribed 295:20 312:12 presence 155:9 present 6:19 12:15 50:6 69:23 128:22 146:10 162:18 163:2 164:25 227:6 229:2 259:6 296:23 297:7 301:15 319:11 338:11,11 364:17 presentation 14:1 16:7 16:8,11 17:17 18:5 21:14 23:19 42:10 45:5 50:19 115:13 116:15 117:4 124:19 126:25 131:15 132:9 133:6 142:14 144:11 150:20 162:2 190:13 190:22 209:8 215:22 244:13 249:1 256:14 281:17 282:5,9 291:12 293:7 332:25 presentations 15:15 43:3 73:10 116:13 131:12 132:5,8 281:22 292:24 presented 19:15 34:7 36:21 104:7 127:13 134:9 146:16 152:23 162:20,24 239:12 336:15 349:8 365:18 366:17 376:17 presenting 113:9 160:2 289:18 presents 146:8 319:25 Preservation 223:8 240:18 241:3,16 242:9 277:20 296:21,21 preserve 69:21 193:25 195:10 preserving 114:23 259:5 President 203:16 Presidential 166:22 182:5 pressure 329:18 334:16 340:16 pressures 323:1 presume 296:7 pretend 246:12 pretty 8:22 15:5 23:24 24:9,11 25:3 81:20 84:7 164:8 190:13 213:24 220:14 225:17 226:3 240:5 245:25 250:24 308:17 310:21 334:2 379:12,19 prevent 78:20 109:25 137:17 348:15 preventing 141:3 213:10 prevention 54:10 378:3 prevents 72:10 previous 21:2 43:2 66:21 93:13 144:15 273:9 289:7 336:2,8 336:12 343:23 previously 126:7 127:19</p>	<p>137:1 141:8 144:15 157:13 168:14 171:8 239:10 307:25 pre-Ag 147:3 pre-application 368:4 pre-appointment 12:21 primarily 51:11 59:22 126:22 153:6 176:21 191:13 192:13 236:19 primary 40:1 42:15 48:1 129:21 176:20 251:11 print 294:3 printout 16:5 printouts 16:2 prior 19:23 29:14 40:12 40:15 41:23 108:8 114:1 142:19 146:21 269:13 360:13 368:4 priorities 43:18 213:7 prioritization 52:1 prioritize 61:20 135:19 144:21 213:11,11,12 213:13,15 214:12 215:12 242:17 prioritized 211:11 prioritizing 62:9 170:1 313:24 priority 23:24,25 24:2,2 24:7 26:12,20 46:6,8 51:25 56:4 72:11,13 84:20 232:21 247:1,2 302:25 310:1 352:8 371:3 372:16 private 75:5 90:1 251:19 251:21 316:10 privilege 286:23 proactive 56:8 295:22 probably 76:4 81:17 92:6 120:3 125:24 131:20 161:2 174:2 186:22 189:10 200:20 202:2,25 208:1 212:11 212:17 217:20 218:6 219:14 226:16 243:25 256:10 258:3 260:23 282:2 302:19 342:17 358:1 361:23 362:6 371:24 probe 49:16 probes 119:25 problem 24:1 38:11 68:21 70:19,20,20 71:1 72:4 75:14,15,21 75:24 80:9,15 84:9,10 85:9,13 89:1 98:11 120:17 121:18,19 140:15 166:15 168:25 198:6 203:13 214:13 214:14 216:24 250:25 256:23 257:15,21 259:3 262:2 263:3,4,7 264:8 267:15,17 271:10 272:6 274:8 275:23 276:6 280:12 312:17 318:14 325:21 327:15 331:9 333:7 346:19 354:4 357:7 358:12 367:24 383:15 384:17 problematic 44:7 198:1 208:25 386:22 problemistic 201:4 problems 23:21 24:10 24:11 25:5 26:8,9,21</p>	<p>26:22 27:15 29:22 32:20,22 38:8 39:6 68:25 69:17 70:4 74:14 76:6 78:19 79:11 87:14 92:1 119:9 207:2 212:16 216:19 223:1,2 226:20 232:24 245:3 246:5 249:14 251:22 253:19 254:4 256:18,21 257:5 262:11,16 263:25 271:18 289:14 292:22 308:10 312:8 333:9,12 procedural 17:5 procedure 266:10 proceed 13:25 165:18 282:25 proceeding 16:22 158:5 268:21 proceedings 2:17 269:4 process 11:16 12:22 13:15 15:16 16:7 23:10 28:4,11,16,25 51:6 65:13 80:5,16 82:14 83:7 85:16 90:24 91:4,4 92:5 98:2 99:25 100:2 101:10 103:14 123:16,17,19 126:17 130:22 152:9 152:10 153:11,12 154:21 157:1 161:4,7 161:23 164:12 166:17 168:11,20 170:1 174:10 177:25 185:6,8 185:12,15 186:14 188:20 195:19,20 200:2 221:8,9,10 229:3 231:10,15 233:11 234:16,18 235:9,18 237:2,7 245:13,14,18,20 252:4 264:11 271:20 272:25 273:3,4 282:18 290:24 290:25 293:3 296:2 299:15,16 309:22 334:12,13,19 347:11 353:4,6,12 354:3 358:15 364:18 385:9 processes 28:14 44:8 56:3 91:16 233:16 330:5 produce 52:17 302:1,10 produced 53:3 193:21 producer 79:25,25 producing 308:16 product 24:18 104:10 231:9 371:7 production 111:14 118:4 236:10 302:12 317:7 productive 212:22 227:7 236:8 products 75:17 87:24 215:6 professional 167:17 205:9 223:6,10 367:16 367:17 professionally 185:15 professionals 347:8 Professor 238:13 proficiency 142:2 profit 141:18 331:21 profound 208:3 331:10 program 10:19 30:20</p>	<p>31:11,18 33:16 35:25 36:9,10,12,15,19 45:23 46:19,24,25 48:23,23 51:2,3 68:17 75:6,10 88:10,13 89:11 96:16 99:21 104:17 111:19 114:11 114:12 119:14,15 120:18,20,21,21,24,25 124:6,21 133:21 145:19 154:12 155:22 157:3 160:16 166:7 167:1 168:1,10 169:12 169:14 170:4,14 171:18 172:15,25 173:11,16 177:21 180:6,15 181:24 183:14 185:9,11,16 200:13,15 201:4,24 202:18 203:21 204:22 208:3 209:4 212:13 213:1,4 214:23 216:1 219:1 229:24 230:20 235:20 241:2,15,17 244:16 246:10 253:17 253:24 255:20 256:6 277:21 291:21,25 296:22 297:3,4,9,15 297:20 298:2 305:4,6 305:13,19,24 315:19 319:23 323:7 324:25 336:22,24 337:10,10 369:1,14 383:16 programs 31:17 65:7 67:12,17 68:3 69:16 75:11 88:20 120:19 121:1,24 152:8 170:17 177:20 182:5 209:24 225:25 232:3,18 242:16 244:18 304:14 305:2,9,10,17 310:8 310:12 315:21,24 316:6 374:17 376:22 PROGRAM/BASIN 3:13 progress 28:1 34:21 35:6 60:22 61:16 65:8 82:7,16 201:9 205:5 349:17 373:8 progressive 82:7 209:24 prohibit 88:8 prohibition 297:25 project 8:16,25 14:10 68:8,11,13,13 76:10 79:2,2 85:2 90:18 91:5 218:5 219:11 221:12 231:22 235:6 236:19 241:7 260:13 278:4,13 334:2 projects 24:13 30:2,5,11 30:12 46:14 57:9,10 57:13 67:15 229:16 230:25 233:7,16,22 235:17 274:24 275:3,6 275:9,10 276:20,20 374:16 376:21 prolonged 255:15 promising 312:1 promote 83:12 210:5 212:15 prompted 24:24 promulgate 204:1 303:9 pronounced 196:19 Prop 247:9 proper 54:10 109:15</p>
---	--	--	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>205:21 312:21 properly 275:8,9 properties 210:20 231:8 233:4 property 24:13 46:25 119:2 155:10,18 183:20 232:15 314:10 proportional 309:19 proposal 34:1,5,8 35:3,4 35:18,18 64:16 102:21 103:8,13,16,25,25 104:4,18,22 127:2,13 129:7 130:3 131:7,8 133:23 134:15 145:10 145:23 146:25 147:11 157:13 158:2 168:1 181:16 184:5 192:20 197:24 208:12,13 227:15 250:11 251:5 252:16 255:3 273:12 273:13 275:10 276:18 276:19,21 288:2 289:9 293:7 296:4 299:20 304:13,22 305:7,16 310:5 312:5 319:9 320:1 330:6 333:22 334:24,24 339:12 341:1 354:11 365:18 365:25 366:15,21 374:21 377:2,11 386:20 proposals 35:11 129:21 142:4 196:11 202:4 222:7 273:11,14 288:16 352:1 propose 57:13 142:12 143:8,22 148:16 169:17 176:10,19 207:8 282:7 333:23 proposed 11:13 34:5 35:1 36:16 52:9 54:7 54:18 55:18,19 56:16 64:7,7,17 93:15,19 95:13,20,22 96:14 98:2 102:21 110:10 111:19 113:6 128:22 140:3 142:7 144:21 145:13 146:20 154:8 156:24 159:19 160:7 163:8 165:3 172:25 174:1 176:18 180:7 181:24 183:5 184:16 186:13 191:16 204:23 210:4 232:10 238:22 275:4 291:23 304:11 304:18 305:7 308:9 320:3 323:18 337:6 341:2 373:10 proposes 55:7 184:24 proposing 27:9,15 54:11,24 55:22 83:17 106:23 143:20 145:15 147:8 148:24 150:18 175:25 181:18 183:6 257:25 266:21 proprietary 84:22 142:16,17 223:25 371:10 prospective 34:4 89:16 protect 35:15 56:8,18 61:2 69:24 71:3,18 123:25 138:23 152:8 174:11 182:15 195:10 264:11 272:19 286:20</p>	<p>287:24 324:18 325:4 330:2 344:16 350:13 378:6,10,11 protected 56:4 61:4 66:18 142:18 287:7 protecting 36:18 43:19 44:5 45:1 72:9 90:13 114:25 124:2 276:22 276:23 301:20 322:20 protection 27:21 36:5 37:6 43:25 52:2 56:12 61:15,22 62:9 68:25 71:24 72:5 152:11 209:24 251:19 protective 48:16 223:24 305:4 protects 262:10 protocol 159:10 205:21 317:25 prove 247:20 257:13 303:25 307:20 proven 295:19 proves 238:20 provide 8:19 15:15 18:20 19:17,22 22:4 24:4 71:17 101:16 111:2 130:11 133:6,8 148:10 158:7,8 167:2 168:14 172:18 173:19 178:21 190:10 209:11 229:19 231:7,24 232:5 234:16 235:13 266:10 266:11 300:25 303:21 304:24 305:20 329:21 345:20 364:16 385:17 provided 14:22 37:15 102:24 103:17 127:11 141:22 204:8,16 230:11,24 266:4,8 323:2 325:12 356:20 providers 8:18 324:11 provides 57:21 65:3 142:7 147:5 175:16 181:23 192:1 231:10 238:5,7 239:17 305:16 324:7 providing 33:4 67:8 104:25 108:1 135:1 172:8 173:25 provision 88:1 139:24 142:10 145:14 148:14 156:20 161:20 168:15 170:16 174:18 175:1,8 180:24 266:9 provisions 111:15 139:7 142:13 147:10,12,16 147:19 148:22 157:14 167:22 174:3 180:4 provocative 207:13 209:23 prudent 112:22 Prunedale 248:21 249:18 256:22,24,25 257:9 258:18 public 10:16 11:20,21 12:3,17 13:3,11 14:11 23:16,18 24:1 26:12 28:13,23,25 29:14 30:6 32:4,14 33:4 36:1 36:18,24 37:3,10,11 38:7 44:3 45:10 51:8 52:1 56:4 68:24 70:5 71:13,21,24,25 72:3,5 72:5,7,9,17 74:4,17,18</p>	<p>76:12 99:5 102:18,25 105:19 113:16,19 116:8 117:18 123:3,4 128:2 134:18 142:23 142:24 152:21,25 160:25 164:16 168:12 168:16,17 209:11 221:24 222:4 224:2 248:23 251:14,15 265:23,25 275:22 276:5 277:22 284:14 289:12 300:18 303:1 316:10,22,24 319:13 319:15,17 321:2 324:9 324:15,16,18 325:4,14 360:3 366:6 375:7 385:21 publicly 40:17 41:3 202:11 322:1 336:25 337:1 public's 225:7 published 225:8,10 249:12 292:18 376:16 pull 186:4 220:18 251:7 359:25 364:12,15 pulled 14:6 119:3 121:22 136:3 347:5 pulling 25:16 251:6 283:5 pump 247:17 pumping 76:3 247:13 punished 114:16 punishes 308:7 punitive 112:11 punted 359:5 purchase 302:10 pure 71:9 purpose 103:23 152:4 153:14 181:22 191:14 228:18 269:15 306:21 306:22 362:16 purposed 33:22 purposes 152:6 pursue 63:20 64:21 65:21 66:16 68:2 240:9 pursued 104:13 pursuing 66:4 Purveyor 117:21 purveyors 91:9 push 77:5 116:10 209:18 250:13 262:6 pushed 303:17 334:25 pushing 334:18 put 23:23 85:25 106:18 120:1 124:25 136:2,5 137:6 139:17 140:4 145:5,24 148:1 159:16 177:24 178:8 179:1 189:21 202:10 203:24 204:14 226:19 237:8 260:25 263:19 266:14 268:9 314:4 316:20 333:13 340:21 343:5 364:15 puts 161:2 298:1 312:22 379:24 putting 101:9 348:3 354:20 362:8 pyridine 377:25 P-e-p-p-i-n-g 195:6 P-e-r-l-a-s 320:10 P-e-t-r-e 300:11 p.m 115:25,25 116:3</p>	<p>387:15 <hr/> Q Quail 207:19 241:19 243:1,11,15,24 qualifications 111:25 qualified 215:5 qualifying 177:19 quality 1:9 2:10,18 3:3 8:12,24 10:22 17:4 23:7,11 26:17 28:3 29:22 30:1,4,11,13,21 31:22 32:2,11,15,19 33:10,12,18 34:13 35:16 36:17,24 37:19 37:22 38:8,25 39:6 44:2,12 46:6 51:14 52:7,11,13,24 53:7,20 54:5,21,23 55:9,17 56:8,10,19 57:5,5,10 58:12,16 59:2 60:10 60:23 61:14,21 62:15 62:18 64:20,22 65:11 65:17 66:2,25 67:3,5 68:20 69:8,15,21,25 71:1,1,4,19 74:14 75:7 75:7 76:17 79:14 87:21 88:23 91:11 92:4,9 96:5,6,11,14,18 102:15 104:12,23 107:25 111:7 114:8 131:14 132:19 133:5 134:4,25 135:18,20,22 138:15,22 139:8,14,15 139:19 140:2,6,11,14 140:20 148:5,13 149:3 149:18 150:13 152:4 156:18,20,22 172:7 174:9,12,13 175:17 176:1,2,25 179:19 181:1,24 182:10 187:2 194:2 196:2,5,8 197:11 198:25 201:9 202:19,23 204:11 206:17 207:5,16,22 208:8,15,19 209:2,24 210:3,5,8 211:22 212:15,19 213:5 214:4 214:11,16,17 215:18 215:19 216:7,19 217:17,18,21 223:8 225:25 226:12,20 227:7 229:14,21 230:7 230:11,18,20 231:2,18 231:24 232:24 233:9 233:17 234:13 242:9 242:13,18 246:13 251:13 255:12,17,20 255:21 256:1,5,8 263:13 269:4 272:9 274:12,13 277:12,20 278:11 279:9,20 280:22 288:5,8 291:4 293:17,19 295:14,23 296:5,6,9,16,21 301:21 302:23 304:10 305:12,17 309:20,25 310:2,24 311:7 314:3 314:8 316:1,22 320:2 322:12,23 323:3 330:2 333:9 335:18 336:24 337:6 344:14 350:13 362:17 365:12,17 367:4 376:13 378:7,12</p>	<p>386:13 Quandt 4:13 304:5 306:1 309:6,9,9 310:21 quantifiable 31:24 quantifying 292:11 quantity 316:23 quarter 46:15 203:8 292:24 quarter-by-quarter 279:14 que 22:16 queasy 221:21 224:3 question 16:3,6,7 19:2 45:15 50:9 73:6 81:10 81:19,25 86:11 87:4 91:1 97:2 98:4,17,21 99:2 101:11 105:9,17 110:24 117:13,24 118:6,17 120:3,6 121:20 122:12,21 124:18,24 125:21 127:2,15 129:12 141:24 158:4,18 159:24 162:13 164:13 178:19 179:9 180:12 183:2 197:17 201:5,12 210:2,3 215:24 218:24 219:19 223:14 225:4 228:2,3 236:5,8,20,25 258:17 275:15 283:13 283:14 289:7 295:11 298:11 303:7,8,13 313:4 316:2 328:12 335:1 337:16 338:9 339:6 343:14 348:24 351:11 352:10 354:10 359:5,7,13 362:9,13 363:2 367:11 368:1 369:9 372:14 373:17 374:5 375:3,10 376:6 381:3 382:6 383:21 questioning 257:23 333:3 questions 15:13,14,21 15:24 16:5 73:4,17 77:23,25 84:5 97:6,8,9 99:8 101:21 105:6 116:6,15,16 117:3 121:4,7 131:11 186:9 189:15 193:19 223:13 224:11 228:7 234:18 235:16 237:15 256:13 256:14 258:9 260:6 276:24 281:11 288:22 303:20 369:3 380:7 384:22 quick 17:4 50:9,10 179:21 187:20 194:5 226:1 272:8 347:2 369:9 381:3 quicker 303:1 quickly 29:18 66:8 123:24 159:18 169:3 179:22 227:22 235:1 241:18 254:13 280:17 301:18 quite 20:9 151:10 205:14 207:2 208:17 243:7 287:19 319:6 326:10 364:1 quorum 13:1 108:11 128:1 quote 23:5 47:23 49:11 65:9 71:7 288:23</p>
--	--	---	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

289:1 326:2 quoted 306:22 329:9,22 Q-u-a-n-d-t 309:10	realized 197:25 332:1 realizing 79:20 really 8:15 13:17 26:10 27:22 39:17 58:18 74:19 76:1,8 85:17 89:15,18 92:22 96:5 96:19 99:6,9 100:10 101:8 136:16,21 137:8 144:21 145:2 160:8 172:15 173:4 177:6,13 199:20,23 206:24 209:13 211:18 212:23 213:9 216:22 218:4 219:10,22 223:3 224:15,17 225:2,24 226:7 227:12 247:7 248:17 252:11 259:22 261:18,20,21 262:13 267:11 279:21 280:9 288:21 293:21 294:20 299:4,17 310:20 317:24 330:8 334:10 335:5 346:6,7 348:6 352:4 355:18 356:21 358:3,14 359:22 370:20 373:18 374:8 386:16	315:18 recognitions 7:24 recognize 8:1 147:4,20 148:2 149:20 150:2 154:11 165:24 175:6 177:11 260:2,2 recognized 33:19 recognizes 56:7 64:25 recognizing 54:22 148:19 174:14 recommend 150:9 151:23 153:5,14 175:19 196:13 recommendation 14:23 22:25 29:8 73:11 201:13 238:10 239:24 295:1 recommendations 78:17 101:22 109:9 249:20,21 282:9,13 326:1 378:12,14 387:1 recommended 133:9 239:24 reconcile 111:12 reconciliation 111:2 reconsider 20:18 reconvene 387:12 record 11:5,9,11 12:6,8 12:9 17:2,7,14 18:10 18:11,12,13,14,15 20:2,6,11,13,18,19,20 20:21 21:2 40:12 67:1 70:2 113:16 114:1 132:14 134:17 194:22 265:1,3,15,17 266:3,7 266:14 267:7 268:5,10 271:24 303:18,21 335:13 recorded 49:13 277:3,13 recorder 11:7 recording 11:7 16:21 22:10 recordings 11:8 records 83:14 265:17 recoup 368:22 369:17 370:24 371:25 372:6 recouping 369:2 372:1 recreation 262:8 recuse 10:2 recused 206:5 recycling 351:7 red 15:2,6,9 47:4,10 48:7 48:13 59:16 60:3 165:12 177:24 206:1 212:4 reduce 55:22 57:4 98:14 233:2 292:2 350:12 386:13 reduced 39:2,14 61:11 62:12 350:14 reduces 255:4,4 reducing 56:14 230:16 reduction 34:18,23 35:7 72:19 207:25 reductions 28:2 39:9 229:14 230:10 241:22 242:4 reevaluated 144:19 reevaluating 145:11 refer 69:9 78:2 144:7 145:19 279:14 reference 17:17,22,25 18:3,25 19:18 20:8 33:17 42:2 48:21	124:7 149:11 150:15 190:9 313:5 345:14 referenced 17:21 18:1 18:17 20:6,22 39:20 41:10,22,25 42:4 45:7 113:8 336:13 references 17:10 19:25 41:16 referencing 19:8,10 149:10 325:11 referred 124:18 125:17 127:1 142:25 146:22 263:1 362:10 referring 40:11,22 117:15 159:20 222:3 235:8 249:12 288:24 341:13 refers 20:12 refine 208:11 reflect 145:20 154:14 157:1 210:25 235:9 309:24 365:10 reflected 106:9 126:4,19 292:25 reflecting 225:22 reflective 168:3 reformatted 146:15 refrain 343:1 regard 25:8 42:14 112:13 135:14 136:7 136:12 137:1,11,22 138:1 139:3 140:8,22 141:17 142:3,15 144:6 207:16 regarding 13:13 15:22 22:25 76:17 89:19 93:14 135:10 140:22 141:5,5 142:3 197:18 317:23 318:2 regardless 286:18 378:9 region 8:4 25:12 26:24 30:5,12 31:1,2,5 33:2 36:7 37:8 38:1,8,15,16 38:20,21 39:1,24 43:2 44:15,18,24 45:4 46:8 46:15 49:5 51:19,21 56:22,23,23 58:18 59:4 62:7 67:13 95:23 96:9 111:24 113:21 114:9 121:12,13,16 133:3 166:18,20 168:2 183:3,8,10,17,24 184:2,18 185:1,3,5,20 185:24 186:3,18,22,24 190:3,14 194:1 197:9 197:14 207:15 209:6 223:4,5 226:11,20 230:2 237:13,19 255:22 302:20 310:7 310:13 322:8,14,20 325:1 337:19 345:4,4 345:5 346:18 360:17 374:1 regional 1:9 2:10,18 3:3 6:5 10:22,23 14:1 31:11 32:3 35:24,25 39:1 45:22 90:19 102:15 104:8 107:24 152:18,20,25 161:5 172:4,8,12,19 173:23 175:12 177:21 180:25 181:11 183:11,13,15 183:22 184:4,6,14,18 185:1,2,25 189:11	198:3 204:18 209:12 227:13 229:7,24 234:14 256:1 269:4 272:9 277:22 279:20 291:4 304:12 305:20 317:24 336:3 regions 38:20 58:15 69:15 70:4 region's 93:16 96:5 234:13 registered 149:25 150:2 205:9 367:16 registration 320:22 regular 213:6 283:22 348:19 regularly 385:12 regulate 31:12 65:20 77:8 124:12 181:1 275:18,18 336:1 regulated 33:6,7 112:22 226:18,19 296:2 374:9 regulates 72:16 regulating 296:6 322:22 regulation 26:9,10,14 27:11 79:16 93:19 107:17 124:9 192:25 193:4,7,15 203:12,13 205:4 238:24,25 239:1 251:21 278:2 321:24 352:24 regulations 70:12 81:5 93:15 95:13,21,22 108:21 109:14,16 110:4,7 112:2 238:17 238:18,20 257:18,19 268:20 269:3 308:9 321:23 366:2 regulator 112:22 286:3 regulators 168:16 regulatory 3:12 29:20 29:20 35:21 36:14 51:2 80:5 82:13 103:21 109:4 111:15 112:24 152:7 200:4,5 200:7,10 201:25 203:11 204:25 215:10 226:1,15 231:3 232:18 233:13 235:18 238:17 239:8,15 259:7 305:15 324:18,24 331:14 332:5 348:2,8 354:15 355:1,9 reinforcement 253:17 reiterate 135:8 reject 11:13 238:9 related 26:8,21 28:24 63:14 78:22 117:25 260:1 314:4 315:6 388:14 relates 287:4 relations 308:24 relationship 230:22 relative 26:9,16 58:16 89:24 345:21 382:24 relatively 25:20 38:23 55:8 release 142:24 357:8 358:19 released 17:11 18:4 19:3 102:16 249:8 258:21 268:15 relegating 252:24 reliability 208:24 reliable 208:15
R R 3:1 4:1 5:1 311:15 racial 326:5,8,14 rainfall 243:25 358:10 raise 326:14 raised 108:6 115:13 234:2 288:22 318:10 321:2 rallying 373:19 Rampston 330:16,18,19 Rampton 4:20 323:24 ran 184:20 ranch 155:5 243:12,18 318:11 370:5,16 371:5 378:22 379:12 381:9 rancher 378:24 ranches 104:25 323:13 367:22 random 227:18 Randy 4:15 316:13,15 range 261:25 346:25 355:12 370:16 rank 211:11 ranking 74:8 rap 260:2 366:19 rapidly 44:16 Rarely 64:5 rarity 308:5 Ratar 374:24 rate 91:8 248:5,8 ratio 141:25 343:2 344:25 345:6 346:19 346:21 347:16 348:21 355:23,24 357:19 359:2 360:6,25 362:11 rationale 37:16 ratios 179:16 347:20 349:11,22 Raul 92:24 raw 212:1 376:14 RAY 5:3 Raymundo 376:10,11 reach 65:4 254:16 reached 133:25 234:6 read 93:5 97:24 102:14 106:22 107:9,13 116:20 132:1 141:19 154:16 160:8 181:7 257:8 268:20 272:13 272:13 276:4 277:11 277:11,17 297:18 300:24 340:10 341:4 342:11,12 351:2 380:12 readily 39:10 reading 141:25 259:17 269:1,2 277:17 347:1 349:5 ready 207:8 221:5 288:15 305:11 Reagan 203:16 real 42:20 43:1 72:12,12 83:20 95:7 241:7 311:22 347:2 348:9 349:22 realistic 114:18 285:14 309:2 reality 43:11 79:8 142:20 303:19 realize 331:7	reasonable 23:7 62:17 65:3 96:19 128:17 150:19 181:2 213:17 215:7 220:6 253:21 255:18,25 256:2 266:16 267:3 269:17 284:12 301:17 302:23 303:13,22 319:16 361:11 reasonableness 181:5 reasonably 174:20 reasons 126:6 155:4 216:6,6 273:19 287:21 306:13 reassure 13:2 rebut 267:12 268:12,16 rebuttal 14:13,19 266:10 268:24 269:10,12,17 269:18,23,25 270:14 282:10,12 recall 28:9 105:17 186:5 341:16 recap 107:10 receipt 348:5 receive 61:3 172:12 188:24 331:3 received 29:2 35:11,23 37:13 51:5,8 130:7 242:8,11 313:16 316:4 receiving 53:24 57:22 88:2 173:14 369:3 receptive 308:8 recess 73:16 194:10 260:9 recharge 57:12 76:4 recharged 50:4 recitation 153:7 recitations 143:6 recites 306:20 reclamation 90:18 recognition 151:22			

A6028BD
PANEL HEARING MARCH 14, 2012

<p>relies 98:5,7 214:6 religious 286:5 rely 69:9,10 231:3,6 259:18,18,24 264:13 relying 19:20 38:1 90:1 251:20 362:15 remain 13:21 31:5 50:2 95:19 152:18 153:3 166:7 227:6 242:13 295:11 remaining 14:15 16:4 108:7 373:23 remarkable 90:21 remarks 291:4 remediating 25:17 remediation 25:16 378:2 remedy 143:8,21 remember 64:13 75:15 75:19 78:17 81:2 88:11 219:20 220:5,7 240:4 254:21 259:25 259:25 354:17 remind 16:6 180:21 315:21 reminded 7:18 reminder 69:20 reminding 53:18 remote 95:24 removal 206:19 342:5 remove 54:24 181:17 291:11 348:14 removed 44:8 150:15 156:19 313:8 351:8 375:22 renamed 160:2 renew 28:4,16 renewed 290:7,8 rents 210:19 rep 365:4 repairing 213:13 repeat 81:18 355:3 repeatedly 103:6 296:25 repetition 12:4 15:15 replace 43:17 54:14 150:13 replacement 25:14 252:2 report 10:20 17:6,11,16 17:21,23,24 19:5,6,12 20:15,17 28:24 33:10 34:6 40:11,14,21 41:1 41:2,2,22,23 42:1,3 45:6,8,12,16 46:10 49:10,11 65:14 75:23 75:23 78:15 91:18,19 96:3 100:3 113:6,12 113:25 118:22 119:11 123:12,13 129:4 130:6 130:6 131:5 133:7 134:15 135:7 136:1 137:7 138:13,19 140:16 142:9 151:14 160:18 166:12 171:21 171:22 172:11 173:2 177:7 184:14 185:17 186:5 187:8,18 193:1 211:12,14 216:3 219:19 238:12,13,20 249:8 253:3,4 257:5,8 263:1 264:17,21,22 265:2,3,7 266:6,16,22 266:23,24,25 268:14 269:20,21,25 270:7,12 270:13 273:7,16 275:1</p>	<p>306:12,16,21 307:9 312:8 313:6,14,15 316:21 317:19 321:19 321:20 337:3,25 341:24 354:18 362:1 363:3 382:8 reported 1:24 33:25 126:7 142:23 169:25 273:25 277:4,7,21 279:4,10 341:16 reportee 279:5 reporter 11:6 21:12 22:1 22:4,5,6 41:15,17 45:25 46:2,4 62:24 63:2,3,7,11 132:14 133:13,16,18 164:3 176:15 184:19 194:5,8 194:17,19 229:10,12 241:5,12 258:22,25 268:23 306:3,7 326:23 373:13 388:5,21 REPORTERS 1:22 reporting 10:18 28:1 34:6,15,16,20,22 35:2 35:4 54:9,12 55:2,23 56:1 57:14 58:10 60:22 62:13 63:19,20 65:6 77:3 122:19 123:2,6 127:6,9 141:12 142:21,22 153:24 156:8,9,11,12 157:3 161:14 166:23 170:25 171:7 172:17 179:25 180:1,9,19,20 182:21 183:3,14 186:12,13 199:21 200:19 207:21 211:17 211:19,24 232:25 255:5 264:20 278:4 289:13 296:11,11 325:3 362:4 reports 34:1 41:11 42:19 45:11 62:21 69:6 75:22 133:8 141:7 171:22 179:15 180:14 188:6,14 210:10 212:9 215:4,8,14 249:10 324:19 336:12,12,25 340:9 represented 74:6 103:19 105:4 132:18 245:7 286:1 298:23 302:16 302:19 311:14 315:5 324:4 362:2 representation 133:7 representative 107:6 125:15 170:10 272:17 316:18 366:7 373:20 380:4,8 representatives 9:4 73:21 96:2,22 110:24 112:7 129:2 240:3 319:8 345:3 represented 129:10 286:11 340:25 377:9 representing 8:2,20 17:3 102:10,11 133:1 197:6 199:8 238:3 363:21 375:16 represents 7:9 28:21 92:25 107:7 186:21 309:13 reps 374:3 Republicans 103:5</p>	<p>request 15:13 57:18 152:19,23,24 158:11 165:11 184:3 185:21 186:10 283:2 291:10 365:25 requested 11:19 14:3,25 73:20 126:10 131:16 173:18 336:8 require 25:14 34:15 56:10 98:19 127:8 139:7 142:1 148:13 166:22 175:20 180:8 185:4 186:5 203:13 250:1 301:20 310:7 323:15 337:3 342:12 352:2 358:1 360:18 required 24:20 29:20 31:11,14 32:6 34:3,24 54:4 69:6 71:23 98:19 141:19 155:16 182:10 187:4 220:24 269:11 269:13 273:24 301:22 302:2 324:20 341:5 342:5 346:23 350:23 365:19 366:9 367:6,8 367:8,14 386:15 requirement 66:1 138:18,20 139:24 140:24 148:17 151:21 155:8 156:5 160:19 168:4,5 172:17 173:13 176:23 184:7,13,17,25 185:20,23 203:18 205:7,15,20 252:7,24 253:3 289:10 291:22 314:12 334:6 344:13 344:13 348:2,9,20 350:12 requirements 1:2 2:2 9:21 10:17 23:2 24:22 24:24 33:8,12,21 35:2 35:20 37:4 51:22 54:1 54:7,16,18,19,24,25 55:1,7,10,19,23,24 60:6 62:5,8,11,14 63:15,18 65:2,23,23 66:2,5 84:21 111:16 124:14 130:15,17 141:4,12 142:21,22 149:6 153:24 156:8,10 156:11,18 160:18,24 161:11,15,16 166:9 167:25 171:7 173:10 178:10,12,24 181:17 253:16 255:4,5 289:1 292:1 309:18,19 314:4 324:23 325:4 362:21 373:10,16 requires 84:15 98:11 139:4 141:20 143:3,23 174:8 180:1 187:5 192:25 194:2 341:3,6 349:4 requiring 33:6 78:24 118:4 155:5,8 201:17 341:1 367:12 research 30:1,9,13 49:16 96:8 122:2 203:14 212:14,17,25 218:16 219:9 251:17 315:24 336:2 345:24 347:4,8 348:17 researchers 347:18 reserve 131:18</p>	<p>residents 324:14 residual 170:11 360:13 360:18 361:14,17 resolution 225:12 287:20 resolve 72:2 resolved 63:25 64:5 83:8 386:24 387:4 resolving 72:3 304:23 resource 35:22 121:24 230:1 258:16 301:9 315:25 resources 7:8 31:8 49:4 68:6,14 69:4,16,22,24 71:25 72:6 83:6 90:17 97:14 99:20 168:17 198:23 199:2 202:5,16 204:19 208:14 235:15 258:6 259:5 290:10 respect 17:9,13 18:16 18:20 19:11,14,21 64:14 144:2 148:9 149:3,6 150:5,16 153:15 155:8,19 156:10,18 157:2 159:10 169:20 170:11 172:9 173:3 174:3,5 176:11 178:19 179:25 180:22 181:12 183:23 187:9 188:13,25 190:4 190:5 268:5 272:24 356:19 respected 262:1,4 respectful 245:6 respecting 261:25 respond 83:24 99:7 157:20,23 158:19,24 174:4 208:5 303:19 responded 81:14 responder 317:8 responders 79:12 85:12 responds 280:17,17 response 29:6 32:19 40:22 53:15 54:5 55:4 59:3 81:20,20,23 82:2 86:24 91:1 105:19,24 106:5 110:11 125:20 133:6 142:9 158:8 164:7 165:8 193:17 197:16 230:18 350:12 359:8 360:15 responses 135:6 responsibilities 76:16 167:9,13 responsibility 70:25 76:11 92:14 224:16 286:20 308:18 312:2 325:22 330:1 332:11 378:10 responsible 32:8,9 44:4 68:16 72:8 82:23 120:20 166:11,13,16 192:24 274:4 277:5 333:6,6 378:7,8 responsive 62:4 164:11 rest 11:20 42:9 73:1 120:12 162:1 164:17 164:25 303:24 restoration 30:18 77:15 123:25 124:3 152:5 207:20 213:14 216:7 Restorationist 261:8 restore 69:21 229:7 restored 195:14 230:14</p>	<p>restoring 76:16,17 Restrooms 7:15 result 39:2,13 195:20 196:2 242:4 259:12 271:20 290:24 346:1 results 30:22 31:1 34:10 42:1 48:23 65:15 91:25 198:9 222:1,9 230:9,21 277:12,21 279:23 289:11,13,18 316:11 339:21 365:15 372:17 RESUMED 116:5 retain 281:19 retention 296:7 rethought 153:20 return 94:13 reveal 122:16 reveals 191:25 revenues 238:21 239:3 Reverend 4:20 301:1 323:24 330:16,19 review 17:6 19:17 28:11 28:12 29:11 40:22 83:13 134:8 144:7 225:4 268:15 282:5 292:23 reviewed 12:5 13:3 36:8 reviewing 291:18 revision 128:13 revisions 29:5,9 163:11 Revolving 247:1 reward 335:21 rewriting 148:17 rice 88:6,14 Richard 4:13,16 304:5 306:1 309:9 316:13 317:2,4 Rick 4:21,23 335:11 364:24 366:25 373:2,3 ride 248:3 right 7:6,11 12:24 22:2 22:21 39:21 45:20 63:3,8 66:4,22 70:7 71:9,14,16 73:5 80:22 83:3,10 92:16 100:11 102:4 106:7,8 125:8 125:10 128:23 129:12 130:1 131:3 135:25 136:4,19 139:11 158:3 158:14 159:4 165:9 170:15 176:14 185:3 186:1,23 188:9 190:1 190:17 191:9,22 195:3 200:24 202:13 204:8 204:13 214:8 217:10 217:18 218:1,9 225:2 227:8 228:9,22 232:13 240:18 242:23 244:10 251:3,7 253:21 260:11 261:14 262:6 270:4,9 281:21 282:8,19 284:4 284:16,17 285:19,23 286:7,18 287:6 293:14 298:19 301:11 312:11 317:17 319:6 323:18 327:2,6 330:25 331:7 341:10,18,18,20 342:8 342:19 343:1 351:3,6 351:14 353:21 355:4 361:7,24 362:4,6,7 364:16 369:7,19 371:13 374:17 376:23 378:22 379:7 383:4,16</p>
--	--	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

384:23,24 385:6 387:14 rights 253:20 377:6 379:6 riparian 109:21 138:3,4 138:10,23 139:1 151:18 152:1 236:22 261:11 262:19 risk 43:21 53:4 55:6,12 58:4,6,8 61:8 122:11 170:3,5,12 172:1 207:6 208:15,20 212:3 299:6 323:9,16 324:6 329:24 333:14,15 336:6 337:9 357:6,13 357:25 risks 127:12 172:3 232:10 301:16 321:12 Ritz 3:20 105:8 106:7 107:4,5,6 115:11,13 river 47:12 49:1,14 74:15 118:19 119:17 119:22 125:2 230:6 241:21,23 261:11 262:19,24 322:15,15 331:24 rivers 262:16 263:5 378:17 road 2:19 59:10,22 186:14 196:4 198:4 230:4 243:17 288:9,13 369:18 379:8 roadblocks 319:10 Rob 258:15 Robert 4:6 258:13 374:25 Robin 5:3 377:16,17 Robles 315:4 robust 133:24 171:9 210:4 358:1 robustness 172:25 Rockhurst 308:4 Roger 3:11 28:8 46:6 110:13 285:9 role 74:11 92:12,13 244:23 305:8 316:1 320:2 331:13 roles 74:8 roll 6:7,9 205:1 rolled 298:6 rolling 260:16 rollout 8:22 Roman 167:8 room 10:5 11:24 21:20 90:14 283:20 284:21 288:16 368:7 377:21 root 332:2 338:2 344:19 roots 294:15 Rose 4:18 255:14 320:8 322:4 323:23,25 Ross 4:4 14:8 228:11,23 235:1 274:22 275:5 rotate 293:23 rotating 338:14 rotation 100:25 141:21 338:9,18 339:7 347:12 347:15 361:1 roughly 244:3 round 9:17 371:1 routine 259:22 routinely 205:11 row 10:5 111:11 329:16 rows 22:22 rubber 288:8 348:10,10	rule 157:9 159:9 rules 193:16 226:1 ruling 17:9 146:4 264:20 run 176:13 299:22,23 324:12 346:2 364:9 369:22 running 80:3 179:8 368:13 370:18 379:12 runoff 96:14 137:18,23 150:3 261:22 339:25 runs 243:24 289:14 run-off 242:5 301:13,24 rural 38:20 43:6,23 91:6 298:22 rush 113:23 335:13 353:22 Russ 261:14 Russell 3:5 6:14 10:24 r's 259:16,17 R-a-y-m-u-n-d-o 376:11	sampling 125:7 205:8 205:23 214:20 250:16 263:3 314:6 San 1:11 2:12,19 6:1,6 40:5 42:22 43:11,13 70:16 74:6 90:22 93:1 102:25 106:15 116:1 118:10,13,15,16 132:22,24,24 246:1,2 246:16,17,23 247:11 248:3,7,19,21 256:18 271:25 280:18,19 281:3 284:23 302:17 309:11 310:19 315:9 315:13 324:10,11,16 329:21 331:18,19 332:22 363:23 375:21 375:21 380:15 Sanchez 3:19 73:19,22 92:18,19,23 97:5,9,16 98:21,23,25 99:14,16 101:15 102:1 366:5 Sanctuary 36:5 229:6 242:12 304:8,8 305:11 sand 322:16 368:12 sanitary 71:9 Sanitation 331:1 Santa 46:8,17,23 47:2 47:12,25 48:12 49:22 59:8,19 74:6 93:1,1 125:2 132:22,24 195:9 208:19 237:12 240:15 250:20 263:21,24 264:6 272:2 300:22 301:2 302:17 309:11 316:16,19,24 322:15 346:6 363:23 Sara 4:5,17 226:21 240:17,18 241:2,9,11 244:14 320:7 322:5 sat 299:13 319:10 satisfies 104:22 satisfy 125:24 save 331:25 368:23,25 370:23 saving 369:11 savings 39:13 369:2 saw 45:15 76:16 119:21 197:17 313:6 349:7 saying 78:9 95:12 171:3 171:14 173:24 190:8 218:15 222:23 224:8 257:16 276:2,5 279:2 344:1,2,12 349:18 353:3,13,19 355:5 359:10,11 361:16 368:12 says 71:2 118:7 137:15 137:19,23 138:2 139:14,16 141:11,18 151:19 152:2,23 176:23 177:7 180:25 185:23 187:3 199:11 207:14 223:3 247:20 248:5 253:11,20 255:15 263:16 273:8 273:18,21,25 274:1,18 274:19,25 275:13 277:12,17 278:8 313:19 340:5 341:8,8 348:3 356:19 360:24 361:11 362:3 367:8,15 367:23 SBX2 306:21	scale 26:22 39:1 250:25 291:25 scaled 274:7 275:8 scaling 292:1 scan 254:19 scenario 289:12,16 schedule 128:4,5,21 147:18 148:22 174:14 176:16 177:6 255:15 360:24 scheduled 128:18 245:15 schedules 25:15 31:23 31:24 53:25 57:15 65:3 148:25 175:17,19 176:11,18 182:13 Schmidt 4:10 284:18,19 293:10 296:18,19,19 school 118:10,11,12,13 238:14 327:14,16 328:3,6 schools 43:23 118:8,9 321:7 327:21 328:20 Schroeter 3:12,18 27:11 50:6,22,23,25 105:21 126:2 313:10 314:24 342:21,24 343:9,12,17 344:12 347:2,21 348:25 349:4 350:1,5 350:8 351:16,20 360:9 360:14 361:19 362:1 362:20 381:8,16,21 382:12,16,23 383:3,6 383:17,21 384:1,5 385:3 science 75:24 91:17 134:13 204:2 216:22 218:10 316:11 scientific 19:11 49:13 134:21 198:24 207:8 216:12,14 217:16 scientist 209:2 scoot 287:14 scope 297:7 298:5 Scotland 159:6 screaming 377:24 screen 159:1 se 157:25 214:9 sea 271:17 326:10 381:15 search 202:2 season 281:6 297:12 338:1,16 346:7 361:1 seat 22:22 seats 22:20,21 73:15 second 41:17 53:12 63:1 64:6 150:18 166:6 184:19,21 209:11 235:8 259:25 275:20 277:15 289:5,6 307:3 308:13 313:4 348:3 368:19 Secondly 109:13 seconds 307:12 secret 56:3 secretary 300:25 secrets 56:3 section 3:12 28:5,6 30:25 146:20 180:2 269:6,7 281:9 360:22 sections 12:19 277:6 sector 75:5 316:23 sectors 317:25 sediment 24:10,11,18	26:8 31:6 47:16 55:15 183:19 sedimentation 262:11 262:16 sediments 24:4 see 7:19 11:14 15:9 16:2 21:18 22:21 26:20 29:7 38:22,25 42:25 46:21 47:1,14 48:12 48:18,20 49:18 54:17 55:21 59:6,9,10,11,17 59:22,23 73:8 77:5 90:10 91:25 92:8,10 101:2 116:12 124:25 125:11 127:17 132:10 134:3 136:6 137:18 138:8,16 140:25 145:4 149:14,16 151:2 154:5 154:13 157:25 158:1 158:21 164:19 165:13 174:20 177:20 188:11 189:7 205:4 206:20 208:10,20 209:20 211:21 213:22 217:19 224:1,2 225:1 226:21 228:12 230:18 240:4 250:24 261:6 263:22 270:11 280:12 288:17 297:2,13 299:12 304:21 313:10 316:7 326:10 333:22 334:20 335:2 343:18 345:21 349:11 350:6 354:21 355:2,12 360:4 362:7 364:8 374:18 376:24 380:14 382:9 seeing 47:18 49:22 50:1 83:16 163:14 199:14 223:2 259:11 262:7 345:22 seen 26:4,5 70:1 74:16 75:23 158:5 162:9 233:5 261:7 263:18,21 271:13 segments 25:4 68:2 select 123:20 144:22 153:19,23 154:20,24 165:25 357:20 selecting 147:17 155:2 selection 198:21 self-assessment 172:1 Senate 107:12,16 108:6 108:16 109:19 113:5 115:5 Senator 102:5,6,10,11 102:12 105:3,4,8 107:7,10,14 115:9 125:15,24 239:21 240:1,8 send 63:24 64:1,3,6 sending 380:16,19,22 380:23 sends 227:19 senior 3:5 51:1 330:20 376:15 sense 127:18,18 162:3 224:22 274:6 283:25 326:4 368:6 386:6 sensitive 372:16,22 sent 36:7 37:2 81:12 108:3 115:8 173:23 246:7 272:10 292:10 sentence 15:3,9,10 217:11 265:19,21
--	--	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

274:1 302:8 316:8 SEP 383:16 separate 218:5 306:25 September 17:17 18:6 108:24 133:9 144:14 144:20 145:8 147:3 154:8 273:7 276:12,13 276:16 septic 256:25 257:11,16 257:17,19 258:19 Sequa 20:14 sequence 63:22 Sergio 3:19 92:23 97:7 366:5 serious 24:10,17 25:6 75:15 85:13 91:2 190:7 198:18 208:19 249:5 250:24 262:15 275:24 276:6 331:15 seriously 96:21 seriousness 207:15 serve 36:22 74:8 247:17 247:22 273:11 324:11 336:18 serves 36:16 153:14 324:15 service 8:24 33:13 36:4 74:4,17 99:21 332:13 332:14 377:18 session 16:4 313:13 set 11:20 46:13 108:15 112:8 179:14 202:7 204:21 220:5 236:20 261:1,2 281:19 296:3 350:14 379:16 388:8 sets 121:21,22 122:2,5,7 129:19 131:24 209:4 280:11 295:13 332:5 setting 91:3 settled 64:10 settlement 30:7 64:8 seven 8:2 308:17 severe 26:2,23 32:21 38:7 54:5 59:18 68:20 69:7,17 71:20 312:5 344:14 350:13 severely 46:17 51:23 severity 23:20 25:4 34:13 52:6 62:18 70:3 sewage 317:8,16,17,21 376:1 shallow 119:8 251:23 shameful 307:19 327:24 shape 246:22 371:17 share 4:15 19:7 28:23 93:6,23 101:1 108:22 242:23 301:10 312:2 316:13,15,15,15 367:25 368:7 shared 93:14 95:9 96:1 162:24 163:12 331:16 371:12 sharing 371:9 Shaul 9:5 shear 198:22 sheds 121:17 sheet 369:3 shift 160:10 shifted 33:3 327:13 Shimek 4:6 159:4 163:8 163:21,24 164:2,2,4 260:10,11,12 261:14 261:17 264:19,22 265:1,7,9,11,14,19,21	266:13 267:1,4,10,12 268:3,6 269:15 270:9 270:16,19,21,23 277:8 278:22 279:6 280:3,13 281:9,11 288:24 311:25 Shimek's 291:12 Shippers 99:19 132:18 309:11 shirt 300:15 shoes 13:18 202:10 214:8 shopping 162:23 short 8:16 25:3 35:5 38:23 86:11 94:6 168:25 174:15 205:23 248:25 307:13 335:20 338:16 shortage 87:15 112:5 shortcoming 114:11 shorter 249:1 shorthand 388:4,9,12 388:21 shoulders 286:22 show 35:4 92:6 118:24 148:22 167:6,23 168:6 178:25 222:11 252:15 259:10 266:22 270:24 284:5,8 343:20 345:24 368:1 showed 44:10 48:11 118:23 119:13 139:18 204:10 249:15 311:21 336:10 338:1 showing 49:18,25 119:7 145:15 202:16 249:11 266:25 283:18 shown 29:1 35:20 43:1 47:1 54:8 58:16 59:2 59:16 78:23 164:5 241:21 273:6 317:20 shows 24:17 35:1 116:21 204:10 271:9 336:16 shuffle 171:3 sic 378:17 sick 254:5 328:20 side 88:7 117:18 178:21 178:21 190:11,11 199:6 202:19,19 203:11 294:24 368:20 370:15 379:21 381:14 381:15 sides 114:3 380:24 sideways 280:1 sight 310:25 signed 278:11,15 significance 38:11 251:13 significant 37:11 39:5,8 42:25 44:2 60:20 105:16 110:8 112:4 145:3 150:21 152:11 182:11 187:3 217:2 230:16 235:25 241:22 241:23 245:25 251:19 373:16,21 significantly 95:23 104:1 signifies 150:11 signs 259:18 364:15 silos 88:12 Silva 3:21 132:16,17 133:15,17,19	silver 246:4 253:23 similar 30:11 42:13 48:5 48:23 49:3,18 62:11 102:21 119:24 120:23 130:2 182:6 200:1 259:4 304:18 345:4 353:4 similarities 25:9 similarly 24:19,23 60:16 134:5 224:12,13 231:6 Simmon 97:23 Simmons 17:3 144:10 simple 199:21 200:2 253:8,8 314:19 348:16 358:16 simplest 364:13 simplify 175:3 simply 140:15 224:21 225:17 288:25 290:23 295:24 333:12 353:5 simultaneous 377:20 sincerely 96:20 115:8 sing 241:13 260:19 261:2 single 74:12 263:10,14 280:7,7 291:2 SIP 67:25 305:4 315:18 336:22,23 337:1,10 SIPs 124:18 sir 78:3 282:18 385:3 sit 248:12 282:3 294:24 318:25 site 48:10,11,19,25 49:6 152:18,19 231:11 234:17 235:21 236:6 241:21,25 355:22 376:15 387:12 sites 24:14 25:13,20 46:12,15,16,22 47:3 47:10,11 48:9 49:25 89:24 121:11,12,13,15 121:16 190:12 230:23 233:4 234:8 235:15 237:5 241:19 242:14 263:10 284:24 sitting 77:11 90:16 92:9 94:17 191:9 248:16 379:20 situation 49:3 95:2 96:20 240:7 301:16 378:2 379:25 six 111:24 128:19 166:25 169:5 179:3,10 217:9 247:2 288:18 291:22 297:5 299:25 316:21 sixth 379:5 size 51:16 62:6 106:17 106:25 135:17,23 198:22 295:19,24 308:6 310:24 371:20 skeptical 89:7 skewed 122:8 263:2 skills 199:13 skip 39:18,21 108:4 178:14 slide 16:2,5 26:5 35:1 39:18 73:7 116:20 117:15 118:18 119:14 119:20 121:9 124:25 139:11,17 154:16 159:11 170:15 177:13 180:22 204:10 211:25 230:5 235:8 246:11	249:2 259:13 271:13 271:13,24 272:8 273:9 336:10 343:5 349:6,7 382:7,9,10,23 slides 131:25 132:10 136:2 144:25 178:15 182:21 256:22 260:17 261:7 265:9 266:22 267:8 276:4 342:25 slightly 145:20 157:1,13 203:4 208:16 382:24 slopes 379:13 Slough 230:6 slow 22:7 133:13 198:10 229:10 Slower 229:11 slowly 246:9 slue 49:3 119:5,25 small 24:11,18 25:3,6,20 26:3 62:14 90:1 93:18 93:21 94:19,25 95:3 97:13,14 100:14 101:14 123:20,20 149:20 150:1 199:2 208:23 210:19 250:23 264:11 310:18 318:9 324:9,16 325:1 336:17 340:3,13 344:8 366:13 372:14 smart 201:2 snapshot 195:12 263:6 snide 291:3 Snook 4:20 330:17 332:20,21,21 social 286:18 325:21 Society 292:18 software 201:4 soil 67:22 170:10,12 226:25 312:20 345:10 346:13,18 352:17 357:3,3,14,16 358:5 361:8 368:10 372:23 sold 214:3 solely 102:10 solicit 103:2 solicited 134:19 Solis 4:19 320:7 326:25 326:25 327:3,4,4,7,7 solo 368:4 solution 76:20 80:11 114:22 133:22 134:10 278:17 326:18 333:11 359:3 377:11,13 solutions 66:23 70:21 72:20,22 75:2 194:2 235:7 259:9,13 267:5 296:10,12 351:10,13 solution-oriented 134:22 solve 76:7 86:1 89:2 203:13 solved 85:9,20 solving 304:9 Somach 17:2 144:9 somebody 106:20 276:3 340:25 359:19 371:23 somewhat 357:24 370:11 son 70:15 song 241:13 Sonia 70:14,15 soon 21:15 301:19 352:23 sooner 181:24	sophisticated 201:3 221:14 sophistication 219:24 sorry 9:25 17:24 22:1 40:20 47:25 57:10 60:7 129:5 146:2,18 165:15 170:15 217:9 268:24 291:16 293:12 294:22 307:12 308:16 373:13 381:8 382:12 383:3 sort 46:21 80:17 82:8 84:25 222:9 226:6,8 348:17 353:4,7 357:5 sound 112:3 230:12,16 295:19 316:10 373:4 sounds 13:16 228:5 source 29:17,21 31:10 31:14 33:20 34:3,25 36:12 38:14 40:2 42:15 137:16 180:16 182:2 187:25 192:13 220:23 226:1 229:25 251:11 293:4 317:12 328:6 375:24 sources 26:6,11 31:12 37:10 61:22 182:15 191:20 279:25 south 95:16 241:20 379:21 381:15 Southern 37:1 space 227:11 300:11 Spanish 21:18 22:13,13 38:19 Spanish/English 21:25 speak 11:23 16:14 21:8 37:21 45:25 73:23 90:14 133:14 135:1 163:1,22 184:1 192:1 197:7 205:2 224:20 225:16 228:13,16 235:3 241:4,5,10 244:25 258:13,22 268:23 282:21 300:12 306:3 322:9 342:23,23 speaker 11:23,25 15:4 15:11,24 102:4 115:18 115:22 159:21 194:15 228:20 speakers 3:15 4:2 5:2 11:18,22 12:3 14:18 15:22 283:1 318:16 speaking 7:12 73:15 206:5 224:21 307:17 356:12,15 386:1 speaks 91:19 207:5 208:24 222:19 277:10 specialty 88:4 305:5 species 47:14 232:19 specific 27:16 56:10 57:18,19 59:21 60:20 61:16 123:5 126:10 128:15 137:21 145:13 145:16 156:21 161:17 169:19 185:19,23 186:7,8,21,24 187:10 187:13 188:6,13 189:6 199:19 204:21 213:12 217:7 231:11 255:11 257:2,3,11,13 289:17 342:25 355:22 375:3 specifically 17:16 33:7 35:22 93:20 135:20 139:13 148:25 169:22
---	--	---	---	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>180:4 248:20 257:4 288:2 304:13 313:7,21 320:14,20,23 325:1 386:23 387:3 specifics 80:7 specified 51:17 72:14 154:1 161:8 277:5 specifies 56:2 57:19 specify 343:12 345:19 specifying 27:18,24 137:12 speed 364:14 spell 194:21 378:4 spelled 172:21 302:15 spend 24:20 198:23 217:18 288:18 368:8 spending 68:10,21 232:23 301:14 328:16 spent 30:5 67:13,14 68:13 219:12,14 294:17 368:3 372:19 spillage 317:8 spite 292:24 splash 300:3 spoke 102:9 208:25 219:18 spoken 213:18 spongicides 47:19 sponsored 337:25 sporadically 294:12 sport 47:20 spot 187:25 351:6 379:20 spots 189:25 spread 369:4 spreadsheet 362:5 spring 134:1 springs 155:6,9 squandering 311:19 square 27:3 279:14,15 squarely 286:22 squishy 354:1 ss 388:1 stack 83:13 staff 3:10 7:5,14,20,24 8:2,3,14 14:1,22 17:10 17:16,21,23 19:6 21:14,24 23:18 29:5 29:16,23 33:25 35:2 35:19,24 41:11,23 42:1 45:8,11,12,21 52:9 54:11,24 56:7,17 60:13,16 63:20 64:21 71:17 73:4,17 75:3,12 75:21 76:10 78:24 81:14,21 82:6,9 84:2,3 86:20 93:21 94:16,23 95:8,21 96:13,14,16 100:3 101:16,22 102:14,16 103:8,13 104:4,8 105:9 106:22 106:23 107:20 110:14 111:1 115:12 116:7,15 116:15,19 124:19 128:5 129:4,9,13 131:5,11 135:7,12 136:1,19 137:7,15 138:13,19 139:14,17 140:16 141:7 142:9 143:1,7 144:17 145:18 147:9,9 148:8 151:14 151:14 152:19 156:17 157:20 158:7,19,21 159:14 162:7 165:1,7</p>	<p>166:12 168:24 174:5 177:7,8 178:4 180:10 182:12 191:10,18 192:19 195:18 196:10 197:16,25 198:11,19 201:11,12,17,18,19,20 202:7,12 204:9 207:23 209:8 211:19 213:15 215:4 219:19 221:20 222:14,15 223:2,22 225:4,8 227:14 234:1 234:15,22 237:15 240:8 242:6,17 244:23 244:24 249:2,4 273:7 273:12,16 275:10 276:17,18,21 280:5 282:4,14 287:23 288:2 291:5,24 292:4 296:24 297:2,19,20,24 298:4 299:20 303:4,17,24 304:8,13,22 305:7,16 306:10,18 307:1,25 308:6,13 310:5 311:21 312:5,8 313:4,6,14,15 317:14,19 318:21,21 319:22 321:18 323:2 329:7 330:6 332:14 334:4 335:15,22 336:9 336:13,21 337:3,9 340:18 341:1,23 342:14 344:1,13,19 347:6,6 349:17 352:4 353:12 359:11 361:9 361:11,16,23 364:6,8 365:18,25 366:3,4,8 366:15 374:21 375:4 376:5 377:2,11,19 378:12 381:4 382:8 384:22,25 385:24 386:2,16,20 387:7 staffing 120:7 317:23,24 Staff's 16:8 76:8 83:5 111:3 133:6 135:13,15 157:15 177:16 197:24 238:9 282:9,13 290:22 294:4 326:1 stage 243:17 294:22 stages 222:4 stake 89:18 373:25 stakeholder 103:3 168:19 185:14 stakeholders 32:17 51:6 51:11,12,24 103:15 123:21,21 134:20 158:19,23 163:16 315:7 360:16 stand 217:14 221:17 272:14 273:8 288:15 327:10,23 384:23 standard 48:7,9,14,18 84:19 91:11 139:19 148:17 176:22,25 177:1 181:20,22 182:8 182:8 187:2 207:9 248:24 256:5 337:5 350:14,24 351:17,20 355:9 standardized 217:23 standards 39:15 49:7 53:20 64:20,23 65:12 66:2 67:20 79:2 84:23 89:5 139:8,14,15 140:2,6,11,14,21 148:6,14 149:4,12,13</p>	<p>149:18 156:19,20,22 174:6,13 175:17 176:2 182:10 206:23 222:2 255:17,21 256:7 257:7 257:10 305:1,4 324:18 331:11 337:12 351:19 354:7 359:16 386:14 standing 7:6 22:19 161:13 172:13 218:23 276:1 339:22 standpoint 215:10 stands 18:12 148:15 292:6 305:11 stars 28:20 start 9:24 16:11,23 24:6 38:25 53:17 59:21 73:14 95:17 131:13 169:3 179:15,18 182:16 199:11 201:14 226:18,21 243:16 250:9,12 252:11 254:9 254:10 260:16 269:13 276:22,22 285:2,5,12 285:13 288:14 297:4 314:2 326:19 344:12 369:2 started 28:18 30:20 48:22 75:8 81:3 185:7 192:7 284:9 297:1,6 379:11 starting 49:19 59:5 145:19 176:13 185:18 217:1 297:1 starts 124:2 170:17 283:23 state 7:8 8:2,3,14 9:3 11:4 17:23 19:4 23:8 29:14,18 30:3,9 31:8 33:13 35:25 36:2,3,17 38:8,15 39:4 46:10 62:4 70:8 71:4 74:17 78:22 79:21,23,24,24 87:6,9 103:5,22 122:4 133:25 138:24 143:9 143:19,25 166:21 180:15 182:2,4 191:4 194:21 196:1 206:16 206:18 210:25 220:23 230:4 238:14,20,23 239:22 247:1,19 269:2 283:11 290:9 292:24 303:12 312:6 315:11 318:18 332:24 334:8 337:11 350:20 388:1,5 stated 32:5 51:20 53:19 89:1 140:16,21 252:11 313:16 314:6,12 367:3 statement 10:12 14:13 14:15 23:6 102:12,13 136:13 137:13 140:24 142:19 177:2 293:16 319:17 statements 14:16 99:5 112:7 143:7 259:5 266:12 states 31:25 64:24 74:14 74:23 77:5 79:22 80:1 85:9 87:10,23 91:10 142:16 238:19 239:16 307:5 313:17,22 statewide 30:10 46:13 78:21 121:11 143:21 263:1 State's 29:17 33:3</p>	<p>state-wide 300:16 stating 49:11 198:20 290:12 station 125:7 statistic 126:17 statistics 214:22 329:22 status 286:19 304:15 statute 181:4 statutory 104:23 Staul 22:9 stay 10:4 88:10 274:19 335:22 steak 379:4 steelhead 379:14 steep 379:13 stenographer 377:20 step 211:16 226:8 244:22 326:19,20 377:12 stepped 247:5 381:8 stepping 29:19 steps 154:7 211:14 Steve 4:6 164:2 260:12 277:1,1 311:25 stewards 379:18 stewardship 195:11 365:22 stick 77:14 80:21 196:23 208:4 224:19 227:13 265:17 sticking 98:6 289:10 sticks 86:14 stified 296:1 stipulating 316:17 Stoker 4:4 228:12,14,17 237:24,25 238:2 stood 272:23 stop 41:17 159:22 246:11 260:4 278:2 364:15 stopped 216:6 259:1 stops 319:22 store 88:13,13,14,14 stored 88:11 storing 88:15 storm 26:8,19 47:23 56:12 150:6,16 243:14 243:18 stormwater 35:24 137:18,22 150:3 204:13 262:13 275:14 story 120:1 202:20 247:4 331:19,24 straight 123:25 224:19 strategic 365:22 strategies 212:10 229:19,20,22 231:11 231:12,18 232:7 237:3 331:15 strategy 134:14 231:6 231:16 232:8 234:11 274:16,17 strawberries 88:8 336:9 337:20,23 338:12,13 341:4,17,19,25 342:10 345:23 346:5 347:9,9 strawberry 56:14 59:24 100:19 132:21 294:7 309:13 335:12,16,18 335:24 336:3,4 338:10 338:17 339:18 340:2 340:12 347:25 stream 48:2 streamline 199:22</p>	<p>streamlining 200:1 streams 25:4 46:11 75:11 121:12 262:17 street 152:9 strength 259:8 260:3 strengthen 305:13 stress 276:9 Strickland 239:21 240:1 Stricklin 102:12 105:4 strict 324:17 strictly 116:24 strike 150:9 165:12 strikes 270:4 Striklin's 102:6 stringent 25:14 26:2 182:8 strip 336:6 stripped 274:24 strips 206:19,19 strong 223:4 319:1 stronger 257:18 strongest 386:9 strongly 104:19 238:9 252:15 300:18 structure 33:20 167:24 168:6 169:15 210:20 264:12 structures 141:2 struggle 307:24 stuck 212:23 226:2 227:5 335:2,19,21 student 214:21 students 327:19 328:19 studies 38:21 39:7,23 143:7 191:8,19,21 227:4 230:9,21 258:21 271:3,3 340:8 342:2 study 39:25 40:4 42:11 78:8 96:3 109:2 113:10 122:3 191:6,11 191:18 192:5 193:8,11 271:22,23 311:24 340:4 studying 75:10 stuff 86:3,10 95:1 99:23 100:7 151:7 224:10 262:12 267:22 272:21 274:9 275:13,14 280:1 stymie 87:8 Subdivision 167:7 168:21 subject 10:19 51:21 102:18 174:1 175:13 175:14 177:22 186:3 subleasing 293:23 submission 78:24 324:19 submit 11:23 53:23 55:17 72:14,17,18 103:12 115:18,22 138:14 169:6 185:25 309:21 submittal 63:19 submitted 35:17 54:13 57:1 59:13 103:7 126:5 129:7 144:8 144:15 152:20,24 184:6,17 194:15 269:11,13 275:9,11 306:16 317:19 365:20 submitting 58:1 133:23 211:3 365:14 subpart 151:9 166:8 subscribed 388:16</p>
--	---	---	---	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>subsequent 20:15 39:9 141:10 173:2 Subsequently 38:15 130:13 subset 55:11,15 60:8,11 210:21 367:6,7 subsets 103:3 130:18 subsidiary 167:20 subsidies 88:2,10 subsidized 88:20 substantial 113:10 370:2 substantially 364:14 substantive 155:20 309:18 substantively 102:20 subtle 357:24 358:23 subwatershed 187:7,24 188:18 359:18 success 8:25 52:4 53:16 88:25 89:13 204:22 205:1 275:2 331:19 successes 79:3 successful 81:9 124:6 202:20 203:23 208:3 239:13 275:6 305:21 successfully 75:12 362:7 sucks 218:10 suffer 91:24 299:6 suffering 262:25 276:7 sufficient 108:18 233:13 253:1 292:8 sufficiently 104:18 suggest 101:13 143:25 157:21 177:3 191:25 199:20 200:3,9 203:2 271:4 325:2 suggested 75:21 95:21 95:21 96:22 149:11 153:17 155:3,11 183:22 193:8 347:4 suggesting 80:16 104:11 154:6,8 182:13 203:5 264:23 283:16 366:12 suggestion 80:6 202:15 267:7 suggestions 77:8 86:1 91:18 199:10 347:21 suggestive 157:12 178:13 suggests 142:5 suits 319:2 summaries 143:7 172:6 172:8 summarize 12:3 14:23 270:22 summarized 115:6 157:3 summarizing 153:8 summary 23:10,13 34:10,10,11 49:21 50:7 60:1 78:15 171:21,22,25 172:1 179:18 180:14,19 186:13 187:9,18 204:24 270:24 summer 20:3 207:4 216:3 superior 8:4 104:4 232:22 307:6 superlative 209:4 supervised 367:16</p>	<p>supervision 388:10 Supervisor 74:17 90:16 Supervisors 75:20 supplies 115:1 287:5 supply 37:10 38:3,5,6 43:9 44:6,6 102:13 248:23 253:21 327:18 372:17 support 33:14,17 35:14 35:23 36:10 96:1 142:8 163:10 204:22 229:25 231:3 235:14 249:1 266:12 269:21 270:7,14 286:17 316:2 322:20 323:12,17 325:25 335:12 356:10 374:6,6,8,21 377:2 supported 103:18 229:17 271:2 296:4 supporting 29:23 143:4 235:11 311:3 supportive 320:21 374:3 supports 20:16 37:3 47:13 231:16 supposed 72:13 79:10 166:15 175:2 189:8 270:17 312:15 352:7 Supreme 196:1 Sur 263:4 sure 12:16 20:25 23:6 41:5 81:24 82:16 84:23 85:14,17 91:5 99:15 101:17,19,22 117:9 129:18 132:13 146:18,19 160:23 165:1,5 171:1,5,19 173:17 175:1 176:1 177:2 182:19 184:15 184:23 186:20 188:10 188:11 189:24 190:25 194:7 197:21 208:22 212:21 213:4 215:15 215:16 216:24 221:25 223:15 224:10 239:14 254:12 257:14 258:7 258:23 265:20 267:7 268:3 273:16 285:11 286:10 302:7 307:18 311:4 314:18 319:21 327:19 354:24 362:24 365:2 368:6 383:21 385:23 386:18 387:7 surface 24:3,19,22 32:22 40:2 44:14 46:7 52:15 53:1,10,24 57:22 61:4,15 144:3 148:18 149:1,1,14 154:23 173:11,12,14 175:22 176:3 186:24 186:25,25 202:25 247:15 271:11 320:25 321:8,21 348:12 351:1 351:18,19 381:22 382:20 383:11,12,14 surfaced 110:5 Surfrider 322:6 332:23 333:5 surprised 208:17 221:15 surrogate 80:17 survey 187:6 surveys 127:10 survival 47:9 329:11 survived 160:5 susceptible 38:17 43:7</p>	<p>251:23 suspected 258:4 sustain 79:9,15 sustainability 67:18,20 79:6 253:15 305:5 sustainable 33:24 45:3 52:20,20 56:9 57:7 61:6 79:1 195:15 199:9 234:12 315:23 319:22 325:10 331:23 379:9 382:18 Sweet 4:23 364:24 366:25 373:2,3,3,15 swift 25:13 swore 224:9 sworn 272:19 sympathetic 245:6 symptomatic 209:9 system 8:9,10 9:1 47:22 48:2,2 49:13,17 67:24 76:1 79:20 82:13 120:23 201:2 208:25 209:10 254:22 259:12 264:1 276:12 294:5 311:4,5,6 324:15 338:19 339:14,17 344:18 347:13,15,16 347:17 380:24 systematic 193:4,5 systems 30:17 198:19 237:8 250:17,19,23 259:11 267:20,21 271:17 294:3 299:9 317:12 324:16 336:18 S-a-d-o-w-s-k-i 317:5 S-a-l-s-b-u-r-y 379:3 S-c-h-m-i-d-t 296:20 S-h-i-m-e-k 260:12 S-n-o-o-k 332:21 S-t-o-k-e-r 238:2</p> <hr/> <p style="text-align: center;">T</p> <p>table 21:21 140:8,9,11 140:15 143:10,12,22 149:9,10 177:5,6,7 223:2 294:24 348:25 350:9 360:23 371:13 373:6 tables 270:11 tackle 198:6 tail 242:5 362:12 tainted 25:25 take 15:23 22:7,22 32:1 32:10 38:24 39:3 43:16 47:7,8 58:13 60:5 63:9 73:1,4,12,15 75:21,22 76:4,24 77:15,16 79:18 82:14 82:15 91:16 92:3,11 94:10 97:7 115:16 128:8 146:8 157:23 167:12 178:18 198:18 200:19 202:4 203:11 205:10,10,11,12,12,13 205:16,17,21 213:20 216:10 217:8 221:13 223:15 227:9 234:7 236:10 245:1 246:8 250:10 251:4 254:2 259:10 261:3 272:25 277:14 278:8 282:4 283:15,16,19,23 284:20,21,24 285:8 288:1 289:5 301:7</p>	<p>307:2,11,13 319:5 321:14,20 326:18 328:6,18 331:4,13 348:11 350:8 351:10 354:20 374:6,7 377:5 taken 2:17 24:9,17 25:8 32:4 49:2 56:7 90:23 115:24 154:7 171:25 187:23 202:23 207:6 227:2 242:4 244:23 301:17 309:22 318:2 319:3 388:7,8,12 takes 75:23,24 84:24 155:14 172:2 201:3 251:13 254:6,7 308:16 319:5 358:5 take-home 208:2 talented 331:20 talk 23:9 63:13 67:4,5 122:22 136:4 137:17 147:19 164:10 182:21 188:8 210:14 221:1 234:7 241:18 246:1,9 249:8 254:9,16 266:13 266:16,18,24 267:22 267:23,23,24 269:16 274:4 276:15 288:6 292:20 304:1 318:16 339:16 343:20 348:19 363:8,14 364:13 367:19 talked 23:20 79:6 95:10 108:4 120:4 122:14 137:1 144:13 168:13 171:8 177:5 182:6,9 188:24 201:1 208:18 214:2 219:20 221:19 222:5,8 225:23 264:1 271:23 272:24 292:8 319:11 336:24 358:7 363:7 369:5 370:23 talking 21:10,11 27:1,2 27:12 41:18 42:3 100:22 130:24 149:23 151:18 156:19 163:9 174:15 178:20 179:7 179:11 197:13 207:1 209:17 210:18 218:12 262:7 263:14 273:23 280:5 288:19 328:16 352:10 354:4 364:11 373:17 377:6 talks 78:18 116:20 121:10 155:12 181:5 222:22 319:23 tall 83:13 tangible 210:7 214:3 tank 120:19 tanks 256:25 257:11 tap 62:18 248:14 318:11 tape 11:7 255:10 target 141:25 192:7,19 209:5 312:13 339:23 346:2,3 348:25 349:1 349:3,24 350:10 356:4 359:9,19,19 360:25 361:12 targeting 319:19 354:24 targets 55:14 56:16 295:18 task 329:6 tasked 322:20,21 taught 280:18 tax 199:24</p>	<p>taxes 199:25 315:11 taxpayer 331:22 taxpayers 193:2 taxpayer's 82:24 Taylor 3:21 132:17 TBS 364:3 team 8:23 52:22 75:4 315:20 336:22 385:12 385:17 teams 294:19 tear 314:11 tease 364:10 technical 8:18 19:21 33:5 42:19 75:25 96:13,15 100:2 112:1 127:10 160:25 168:7,8 182:18 208:14 235:7 235:13 241:15 268:10 293:5 324:21 344:3 355:17 356:8,20,22,23 356:24 364:21 technically 142:18 technicians 205:17 techniques 39:12 technology 94:24 204:2 tell 27:20 71:13 87:14 97:25 136:17 204:13 215:14 218:3 221:11 242:25 245:12 252:21 254:17 257:2 270:6 285:3 289:6 303:16 327:10 337:13 355:3 361:8,9 362:2 363:2 368:14,14 telling 76:9 99:10 240:6 248:16 296:3 366:8,12 tells 183:12 368:11 Tembladero 230:6 Tembladero/Blano 231:21 temperature 55:16 temperatures 358:20 template 169:11,19,24 172:8 templates 170:4 200:4 ten 73:13 174:14 216:25 256:2,9,9 260:8 295:22 tenancies 210:18 tenancy 379:18 tends 121:25 tens 24:20 25:2,17 67:14 72:21 tenth 351:3 ten-minute 73:5 ten-year 256:9 294:11 term 34:19 35:5 94:6 124:20 156:6 160:20 162:22 171:20 209:14 371:14 373:7 terminate 175:9 termination 175:8 terms 25:9 33:16 47:21 59:9,19 83:19 84:13 84:14 89:20 104:7 123:14 130:11 202:3 209:19 211:22 212:3,9 215:10 216:12 217:16 221:18 222:6,11,20 224:4 226:17 240:7 256:4 280:11 299:2,2 299:3 303:4 310:1 347:3 352:6 354:7 355:8 357:12,19 358:3</p>
---	---	--	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>358:9,16 361:4 territory 44:18 226:3 Tess 3:16 17:2 39:20 40:18 131:17 133:4 144:9 268:5 354:9 Tessario 309:6 test 47:7,8 212:25 213:6 345:11 364:7 368:20 369:24 tested 250:18 testified 102:24 156:12 testifying 309:10 testimony 7:10 11:5 14:21 108:2 109:10 110:17 116:8 123:15 240:6 268:24 269:10 269:12,18 270:14 300:21 331:3,18 testing 208:8 213:5 219:13,15 252:17 299:9 352:17,17 368:4 368:10,11 371:25 372:20 tests 219:3 252:2 text 45:8 131:25 132:11 157:6 160:23 248:25 texts 246:8 thank 7:1,3,23 9:15,18 9:23 10:7,8,14 13:7,23 16:10 17:1 18:22 21:4 22:17 23:1 28:8 46:4 50:21,23 72:25 74:2,3 74:3 77:19,20 82:18 86:7 91:21,22 92:17 92:20 93:9 96:24 97:3 97:5 98:21 101:12 102:3 105:7,12 115:2 115:10,11,22 116:18 117:12 123:9,11 125:14 128:23,25 130:19 131:23 133:16 133:18 135:1,3 144:9 146:17 161:24 163:4 164:4 190:15,16 194:4 195:7 196:15,17,18,22 196:25 197:4 199:4 206:6,7 211:15 228:9 229:1 234:24 235:1 237:20,21,22,25 240:13,16,25 244:9,14 244:24 245:4 258:10 258:14 260:5,6 268:4 268:18 270:23 281:18 285:24 287:9,10,13,15 289:21,22 290:16 291:7,8 293:8,9 295:2 295:3 296:16,17,19 298:8,9 300:6,7,11 302:12,13 304:2,3 305:25 307:14 309:4,5 309:8 310:14 311:8,9 313:1,2 314:15,25 315:2 316:12,25 317:1 318:3,4 320:6 322:2,3 323:21,22 325:5,7 326:21,22 328:21,22 329:6 330:14,15 332:13,13,15,19 333:17,18 335:7,8 337:15 340:22,23 363:17,18 364:22,23 366:23,24 367:1 369:8 373:1 374:22,23 376:9 377:14,15,18,21</p>	<p>378:19 381:1,2 384:18 385:20 386:1 387:5 thanks 13:6 63:11 81:10 124:23 190:19 206:9 229:12 361:3 372:25 theory 308:24 357:10 thereof 388:15 thing 13:18 23:8 27:22 99:3 127:19 146:15 174:16 191:23 198:22 206:12,24 211:20 213:17 214:24 240:3 246:18 254:20 271:4 274:25 277:15 282:8 287:6 288:4,5,25 293:2 295:8 303:8,9 327:24 334:22 344:1,2 346:22,23 348:18 350:15 352:6,8,16 358:4 360:12 361:13 364:3,13,19 374:19 376:25 381:19 things 13:16 20:20 23:12,24 24:5 31:15 68:15,19 69:11 74:16 77:13 85:4 117:11 147:7,8 150:18 165:6 173:8 179:20 207:4 209:9 213:6,16 214:7 214:19 215:3 222:15 224:18 226:12 251:5 251:25 252:3 253:7 255:9 260:24,25 265:2 267:13,14,14,16,19,20 272:11,15,18 273:22 274:13 279:18 287:25 290:13 292:11 311:25 312:1 313:12 317:9 328:8 330:4 335:14 352:22 354:14 357:4 360:3 364:9 371:16,21 379:11 380:23,23 382:4 think 10:11 15:24 16:11 16:13,15 17:20,25 20:1,9,22 26:17 64:13 79:3,17,18,22 80:1,15 80:23 81:7 82:5,8,15 84:23 85:6,14 86:3,15 87:11 88:24 90:24 91:12,18,24 94:25 97:12,14,24 98:22 99:5 100:6 106:22 108:4 111:11 112:21 117:10 118:19 124:8 124:14,16,25,25 126:3 127:16 128:16 129:5 144:23,25 150:14,18 150:23,23,24 151:2,4 151:7,8 153:20 155:15 156:14 157:16 158:6 159:17 160:12 161:2 163:14,14 164:18 166:2,18 169:21 170:14,16 173:8 177:10 179:19,20 180:21 181:2,18,23 182:1 186:14 189:2,9 190:1 191:21 193:13 193:22 196:14 199:13 199:25 200:14,14,16 200:20 201:5,8,20,23 201:23 202:12,14,24 203:8,10,17 204:17,24</p>	<p>205:2,6 206:25 207:5 207:13,14 208:25 209:1,7,14,15,20,23 210:6,9,10,13,24 211:18 213:16,17 219:15,17,24,24 220:4 220:5,9 221:22 222:17 223:3,8,9,18 226:6,16 227:8,17,18,24,24 242:14,21 245:19 248:2 249:3 250:11 251:18 252:13 253:1,2 255:2,9 256:11 257:1 257:16,17,20,22 258:2 258:12 259:15,16 260:20 262:2,5 263:18 265:9,22 267:3,12,22 269:18,19,20,22 270:8 272:17 274:14 275:1 275:15,20,22,23,24 276:11 277:9,13,15,23 278:6,11,22,23 279:6 279:8 280:15,16,23,24 281:24 282:3 285:13 288:4 289:9 290:11 294:19 295:8 299:18 308:19 309:21,22 312:1 317:9,23 318:13 318:15 321:1,3,6,19 327:25 331:13 334:9 334:19 335:3,5 338:8 340:18,19 341:2,6,23 341:25 342:11,18 343:24 344:9 345:23 346:25 348:8,16,18 349:8 354:9 356:21 358:23 359:7,14 364:7 368:15 369:22 371:12 373:21,23 374:1 385:7 387:8 thinking 92:9 117:7 221:14 254:10 264:2 279:18 280:5 380:6 thinks 156:2,2 168:24 328:19 third 260:2 277:20 318:8 Thirdly 110:8 third-parties 162:5 168:4 third-party 31:18,18 33:15,16,18 34:10,21 57:20 130:10,11 131:1 140:1 155:22,24,25 156:3 160:21 161:3,5 161:9,11 166:7,9,14 166:14,19 167:1,4,9 167:14,23 168:9,12,15 168:23 169:2,5,25 170:18 171:5 172:15 172:19 173:1,18,20,22 173:25 174:17,18,19 174:24,25 175:10 179:12 181:15,20,21 200:14 210:4 211:11 254:21 277:18,19 304:14,17,19 305:9 316:3 356:4 thirsty 328:9 Thomas 3:11,18 4:12,14 7:6 62:20,22,25 63:12 66:10,12 72:25 107:23 109:10 110:23 112:10 112:21 120:4,9,11,14 165:10,11 186:20</p>	<p>259:13 304:4 306:1,2 306:5 309:7 311:11,13 311:13 348:23 360:20 360:22 365:8 thorough 77:2 81:12 thoroughly 12:8 thought 21:2 45:14 50:15 81:19 95:16 98:1 119:21 150:17 163:8 220:6,14 222:14 222:14 226:3,5,5 240:23 258:4 264:3 290:24,25,25 298:14 378:25 thoughtful 108:1 223:6 thoughts 95:19 thousand 24:15 107:8 311:2 thousands 24:15,16 38:16 267:25 321:4 327:19 378:3 385:14 threat 26:19 27:8,13 36:24 37:12 51:13 52:10,13,24 53:7 54:8 54:21,23 55:9,20,21 55:24 57:5 58:16 59:1 62:15 71:21 72:4 135:17,22 303:24 309:19,25 310:24 331:15 threatened 25:19,24 47:13 302:25 threatening 232:18 threatens 332:10 threats 26:13 135:20 249:4 three 11:21 12:7,25 13:4 14:12,17 15:7 23:13 28:17 41:11 51:7 52:9 66:7 68:8 71:11 105:18 110:10 116:10 116:10 126:14 128:11 135:19 138:16 153:22 162:14,16 167:20 171:13,14,15 173:3,5 175:22 177:15 191:8 200:1 208:21 211:25 250:5 255:25 259:16 259:17 265:9 287:22 288:7,13 291:19 292:12 298:16 299:23 308:4 319:2 328:16 340:14 347:15 353:21 361:21 374:15 376:20 380:18 382:17,17 383:4 three-dimensional 280:9 three-month 222:8 threshold 225:17 239:6 351:3 thresholds 44:17 thrilled 250:11 throw 264:7 279:7 319:10 thrown 137:3 thyroid 321:11 tide 119:4 tides 120:2 tied 69:4 Tier 27:11,13,13 52:12 52:19,23 53:6,8 54:20 54:22,25 55:1,7,11,15 55:20,21,23 56:20,21</p>	<p>56:22,23 57:8 58:10 58:11,12,15,17,20,24 58:25 59:4,9,10,12,15 59:20,21 60:1,2,2,3,4 60:4,5,5,8,11 68:1 94:18,18 95:3 97:15 101:5 110:15,15,17,22 111:7,8,15 125:16,18 125:23 126:15,16 130:15,17 133:10 136:8,9,9,16 138:13 139:1 141:19,19 147:24,24,24 153:24 154:2,3 160:17,18 175:14,14 200:19,21 200:22,22,24 205:8 208:20 210:15 252:25 253:12 264:4,5,5,7 292:1,2,3,5 293:24,25 293:25 294:8,10 295:25 297:10,10 298:5,5 304:15 309:14 309:15,15 312:11 324:25 325:1 334:13 334:19 335:16,19,22 336:22,23 338:19,20 338:21,22 339:19,24 339:24 340:19,21 341:9 352:3 364:10 366:4 367:3,6,10,12 367:13,22,24,25 373:12,12 379:25 380:12,12 381:5,11,21 382:1,2,3,5,5,7,10,13 382:15,22 383:5,6,8,9 383:11,15 384:1 385:18 Tiering 105:21,23,25 106:1,13,17 126:10 136:4 198:19 209:10 264:1 12 294:5 312:9 339:17 tiers 52:9 58:14 105:18 106:23 110:11 135:21 136:5,18,22 142:21 147:7,10 148:3 153:22 200:1 227:19 309:18 309:22 310:10 312:9 335:17 tile 141:6,6,9,11 175:23 175:23 176:4 312:15 313:5,7,12,18,20,22 313:23,25 314:2,4,8,9 314:13,20 350:21,22 350:24 351:4,6,17 timber 26:7,17 time 8:16 10:10,15 11:17 11:18,18,19 12:2 14:3 14:4,7,15,19 15:1,8,13 16:16 19:19 25:15 29:18 30:8 31:23 32:1 32:25 38:23 42:18 47:5 49:20 53:25 57:14 68:10,12,13,21 73:2,20 76:25 77:13 77:15 81:11 82:15 83:6 84:11 85:17,18 87:1,17 89:16 92:3,8 92:11 93:10 96:24 100:18,22 102:9 106:6 109:2 111:19 115:10 115:21 116:11,14 117:5 124:10,14 126:16 128:4,6,17</p>
---	---	---	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>131:18 135:1 136:24 147:18 148:2,8,22,25 149:4 153:3 157:23,24 158:6,7,11 160:11 164:5 165:2,24 166:3 169:1,3,10 174:14 175:17,19 176:8,11,11 176:13,16,18 177:6 178:14,20,22,23,25 179:7,21 182:13,22,23 185:13 188:7,10,23 189:20 194:12 199:1 201:17 202:4,24 207:7 207:24 210:13 213:20 215:25 216:10 217:5 219:23,23 220:1 222:14,15,22 233:20 240:4,14 244:25 245:1 247:23 251:8 252:15 254:12 255:15 259:10 260:7 263:10,13,14 269:23 276:17 281:5 281:22 282:4 285:4 287:19 288:8 290:7,22 290:23 294:17 297:6 297:14,23 298:6 299:14 304:8 307:21 308:17 311:18,19 312:12,16 313:5 319:5 319:6 326:16 329:3 330:12 333:4 334:21 355:13 358:21 362:2 365:2 370:18 379:17 380:6 388:8</p> <p>timeline 28:10,20 29:2 105:18 178:16 179:2</p> <p>timelines 176:6</p> <p>Timeliness 307:8</p> <p>timely 15:20 307:8</p> <p>timer 14:24 15:2</p> <p>times 23:12 26:5 33:25 49:8 70:2 124:19 133:7 185:7 202:3 210:14 239:3 297:12 299:23 378:3</p> <p>timing 157:2 169:2</p> <p>tissue 47:19 345:11 368:10,11</p> <p>today 7:13,20 9:4 11:8 11:10,14 12:10 15:8 20:15 22:25 25:22 26:4 28:19 29:9 32:21 37:15 63:16 66:20 76:24 78:6 81:16,17 82:16,25 86:2 89:12 89:16 96:23 102:11,18 106:4 111:24 120:7 121:2 124:15 127:1,19 127:21 132:18,25 134:23 135:2,9 139:12 140:5 145:15 162:10 162:18,21 163:2,15 180:19 193:9 195:21 195:23 196:14 197:6,8 197:10 229:2,16 235:2 238:2,22 240:11,22 245:12 246:8,10 250:9 254:8 261:18,19 262:3 286:9,11 287:6 300:13 309:10 310:1,6 312:4 313:5 318:15,23,25 319:8 321:2 322:9 324:4 327:12 329:4 333:16 352:1 363:8</p>	<p>365:21 366:4,17 367:4 367:8,20 377:6,9 386:8</p> <p>today's 382:8</p> <p>told 84:1,2 87:17 88:15 111:21 139:12 173:22 239:22 248:25 249:4 252:20 257:1 262:21 300:20 340:6 347:18 353:1 361:23</p> <p>Tom 300:8</p> <p>tomato 87:16</p> <p>Tomlinson 4:21 123:12 335:10,11,11 337:18 337:21,23 338:13 339:1,3,11 340:2,13 341:4,8,15,18 342:8 343:10 345:23 346:12 346:14,17,21 347:24 350:21 351:18 352:15 353:10,19 354:9 365:3 365:4</p> <p>tomorrow 283:12,17,24 284:20,21 285:1,3 287:6,20 288:1 312:4 323:19 330:3,14 333:17 335:5 342:19 374:20 377:1,10 386:5</p> <p>tomorrow's 283:22</p> <p>ton 219:9 261:24 276:10</p> <p>tonight 282:2,24 284:14 386:3</p> <p>Tony 239:22</p> <p>tool 305:13 309:23 354:15</p> <p>toothpaste 159:16</p> <p>top 23:25,25 337:19 344:18 346:1 382:17</p> <p>topic 198:4</p> <p>tore 78:16</p> <p>total 69:5 111:6 310:6 343:3 345:6 352:18</p> <p>totalling 317:16</p> <p>totally 21:1 318:25</p> <p>touch 133:14 229:10 300:1,2</p> <p>touched 118:19</p> <p>tough 13:17 92:13 97:9 99:2 195:23 248:17 312:3 329:16</p> <p>tougher 346:10</p> <p>toughest 329:17</p> <p>tour 109:5,10 128:1 236:6</p> <p>tourist 284:23</p> <p>tours 127:20,20,24</p> <p>town 284:23 376:2</p> <p>toxic 46:12,15,16 47:4,5 47:16,17 121:11,13,14 213:12 263:9,10,15 322:14</p> <p>toxicity 24:3,23,25 31:6 44:23 46:10,18 47:1,6 48:6 49:24 53:10 121:9 189:23 190:4 263:20,20 272:20</p> <p>track 98:12 159:1 251:9 323:19 374:20 376:25</p> <p>tracking 344:17</p> <p>trade 56:3</p> <p>trading 359:25</p> <p>Traditionally 286:12</p> <p>training 111:25 112:3</p> <p>transcribed 388:9</p>	<p>transcript 2:17 115:7 388:12</p> <p>transfer 57:8</p> <p>transition 160:5</p> <p>translate 200:10</p> <p>translated 143:15</p> <p>translation 21:19 22:13</p> <p>translators 377:21</p> <p>transparency 168:19 277:23 305:14 321:25</p> <p>transparent 221:18,24 222:2,4</p> <p>transpired 102:22</p> <p>transport 39:25</p> <p>travels 25:11</p> <p>treat 150:12 246:21 250:21</p> <p>treated 25:5 135:11,13 135:15,16</p> <p>treatment 25:2 30:17 37:9 55:13 57:10,11 58:11 60:10,12,14 118:4 135:17,21 137:16,17 150:10,10 205:17 229:18 230:5 230:24 231:13,16,23 232:2,13 233:12,20 234:11,17 235:14 237:4 247:24,25 278:21 322:12</p> <p>tremendous 95:6 365:19</p> <p>trend 214:18 216:20 217:6</p> <p>trends 42:18 49:18 217:7 267:23</p> <p>trendy 201:4</p> <p>trials 219:10</p> <p>tributary 241:20</p> <p>trichloroethylene 364:2</p> <p>tried 144:21 145:2 161:21 175:3 186:4 192:5,9 208:10 211:23 246:23 319:10</p> <p>tries 172:2</p> <p>trigger 186:23 364:12,16</p> <p>triggered 187:3,19</p> <p>trip 39:20</p> <p>trivial 252:8</p> <p>trouble 212:20 216:17</p> <p>trout 47:23</p> <p>true 38:18 44:14 71:13 71:15 119:24 124:3 138:22 198:16 272:1 358:6 362:13 371:8 382:3,4 388:11</p> <p>truly 96:3,11 270:10 272:5 284:22</p> <p>trust 72:8,9 203:15,15 203:16 209:14 213:20 219:11 223:17 224:5 332:12</p> <p>Trustees 300:13</p> <p>truth 221:11</p> <p>try 12:1 71:17 80:10 85:17 88:6,7 115:16 165:22 176:1,14 177:20 178:7 191:7 199:20 213:9 222:16 240:9 246:18 248:16 264:4 303:17 319:9 342:24 359:4 363:14 386:3</p> <p>trying 27:20 80:8,9</p>	<p>83:13 88:18,24 94:22 99:11 101:25 127:22 174:3 176:7 179:1,7 182:12 191:21 210:14 226:9 227:10,11 239:3 245:7 257:24 258:23 270:3,9,21 281:19 295:9 303:19 331:6,25 334:13 338:8 339:13 343:1,19 349:18,21 350:14,17,18 353:2,9 353:25,25 354:5 357:23 358:22,22 368:20 369:19 370:23 371:6,7,13,17 373:6</p> <p>tube 159:16</p> <p>Tulare 248:21 324:3</p> <p>Tulare's 324:7</p> <p>tune 24:15 25:2</p> <p>turn 7:16 16:17 184:25 196:24</p> <p>turnaround 368:19</p> <p>turned 184:4 225:5 228:14 261:14 367:21</p> <p>turning 209:3</p> <p>turnout 245:12</p> <p>turns 226:6 273:3 348:2</p> <p>tweaking 82:15</p> <p>tweaks 185:10</p> <p>twice 12:18 49:6</p> <p>two 9:3 20:20 39:23 42:21 44:5 46:8 53:7 90:6 104:3 126:6,15 129:19 131:24,25 132:4,7 134:18 148:20 154:24 159:5 162:7 167:14 168:21 191:22 194:12 195:1 197:15 211:25 215:3 222:14 222:17 225:22 226:11 228:21 237:23 240:18 240:24 247:12 259:2,3 275:10 281:25 282:1 287:21,25 294:11,12 297:12 298:12,13,15 299:22 300:5 306:13 306:14 307:7,8,13 311:15 314:4,8 326:9 328:8,9 340:14,15 353:21 366:13 367:8 368:16 369:14,15 379:10 380:21</p> <p>two-foot 83:13</p> <p>tying 68:14</p> <p>type 58:23 63:18,21 130:15 149:21 150:11 150:12 152:12 155:6 167:14,18 176:25 177:1 180:3,9,15 232:2 234:17 235:18 237:4 243:8,10 257:25 268:20 337:5 342:2 345:11 346:13 347:24 348:17 352:16 354:14 354:19 361:8 362:4,8 371:16 381:16 383:1</p> <p>types 30:12 44:13 58:5 58:20 59:9,19,24 127:11 172:3 177:19 233:11 235:17 237:6</p> <p>typical 63:22</p> <p>typically 15:6 27:20 43:4 44:8</p> <p>T-h-o-m-a-s 311:13</p>	<p>t2 168:21</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UC 219:8 306:12 315:23 345:2</p> <p>UCI 325:19</p> <p>uh 85:2 142:22</p> <p>ultimate 143:5 193:24</p> <p>ultimately 166:10</p> <p>um 21:21 46:10 48:15 73:3 83:4 90:18 122:14 129:13,15 130:8 142:19 145:15 146:21 153:16 175:15 200:23 214:24 217:14 243:23 266:11,20 271:4 279:11 284:4 292:10 313:17,22 314:2 317:11,12 328:9 342:25 352:5,22 373:18 386:12,14,15 386:18</p> <p>Um-hmm 86:22</p> <p>unable 9:4 134:10</p> <p>unachievable 295:18</p> <p>unaffected 373:9 374:10</p> <p>unas 22:15</p> <p>unbiased 13:22 259:18</p> <p>uncertainty 192:16,17 346:9</p> <p>uncharted 44:18 226:3</p> <p>unconfined 249:16</p> <p>uncovered 251:16</p> <p>underground 120:19</p> <p>undermines 332:12</p> <p>underneath 279:23 368:14</p> <p>underpinning 109:3</p> <p>underpinnings 309:16</p> <p>understand 81:24 83:5 83:22,23 84:6 90:12 97:13 101:20 108:14 113:3 114:3 121:15 129:18 130:19 137:8 153:2 166:19 169:20 175:4 195:24 205:14 210:22 220:25 224:7 224:20 248:9 249:7 252:6,19 259:9 279:13 279:22 280:10 281:5 303:1 306:17 344:5 350:17 352:4,8,25 353:2 355:2 356:2 359:8,9 360:2 382:2</p> <p>understanding 9:5 108:23 113:14 149:23 160:9 192:3 255:6 314:2</p> <p>understands 344:11 385:24</p> <p>understood 146:19 226:20</p> <p>underused 233:4</p> <p>undo 159:15</p> <p>undocumented 93:25</p> <p>unenforceable 34:2</p> <p>unexploding 76:6</p> <p>unfair 162:11 181:19</p> <p>unfortunately 17:8 23:21 39:19 103:15 134:8 247:12 252:1 254:1</p> <p>unfounded 307:22</p> <p>unimpaired 51:21</p>
--	---	---	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>unique 51:7,13,13 129:25 233:15 235:21 331:19</p> <p>unison 230:8</p> <p>unit 58:4,8 90:21</p> <p>Unitarian 286:16 300:14 300:16 329:2,10 330:20</p> <p>Unitary 286:2</p> <p>United 74:23 79:22 80:1 85:9 87:10 91:10 238:3,4 239:10 325:10 330:24</p> <p>Universalism 286:2</p> <p>Universalist 329:2 330:21</p> <p>Universalists 286:16 300:14,17</p> <p>University 191:4 206:16 212:20 315:24</p> <p>unnecessarily 255:15</p> <p>unprecedented 8:15</p> <p>unpublished 255:23</p> <p>unreasonable 96:15</p> <p>unregulated 331:9</p> <p>unrelated 20:24</p> <p>unstoppable 225:3</p> <p>unthinkable 96:1</p> <p>unusable 262:18</p> <p>unwillingness 72:14,18</p> <p>unworkable 99:11</p> <p>upcoming 10:6 16:4</p> <p>update 53:21 126:18</p> <p>updated 23:1,1,4 55:3 102:19 104:20</p> <p>upgrading 24:21</p> <p>upheld 166:21</p> <p>uphill 161:7</p> <p>uphold 224:9</p> <p>uploading 385:11</p> <p>upper 243:11 256:1 299:22</p> <p>upstream 332:1</p> <p>urban 26:8,19 91:7 122:3,4 195:13 204:12 259:8 317:10</p> <p>urge 76:24 77:17 104:19 108:8 115:17 240:8 288:1 299:19 308:22 323:18 366:20 377:3</p> <p>urgency 251:14 299:16 299:18 326:2,4</p> <p>urgent 299:13</p> <p>urges 238:9</p> <p>urging 103:9</p> <p>usable 332:6</p> <p>USDS 336:12</p> <p>use 14:14 28:12 31:12 33:18 35:3 36:13 44:9 45:2 52:14,25 53:8 56:14 71:15 77:14 78:6,11 79:7 91:4 132:11 137:25 141:1,5 143:11,18 148:9 188:6 188:13,14 193:22 208:11 213:3 214:10 214:11,21 215:6 233:3 233:25 235:15 237:6 247:21 254:25 262:4,5 269:25 287:4 306:25 307:1 308:21 309:3 312:13,23 313:17,19 314:13 336:1 340:12 340:14,17,20 345:14</p>	<p>347:11,12 348:22 352:19 356:23 370:17 381:10 383:7</p> <p>useful 252:20,21 348:19</p> <p>user 200:5,6,11</p> <p>uses 44:1,5 45:2 61:3 66:19 253:22 261:25 262:8,18 322:17,21,23</p> <p>usually 43:6 63:23 64:8 83:1 223:23 227:3 365:21</p> <p>utilities 324:10</p> <p>utility 219:10</p> <p>utilize 236:25</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacuum 294:14 308:24</p> <p>vague 136:14 215:1</p> <p>validity 181:14</p> <p>Valley 38:3 39:25 40:7 59:8,18 75:16 168:2,3 172:15 180:6 183:15 190:7 197:13 229:9 230:15 231:19 235:24 237:11,15 244:18 249:16,25 254:24 256:1 272:1 286:15 295:15 311:16 324:10 327:9</p> <p>valleys 272:3 324:12</p> <p>valuable 33:19 81:11</p> <p>value 230:7 232:7,11 260:3 294:13 336:14</p> <p>valued 44:17 262:18 307:19</p> <p>values 262:9,10 333:5</p> <p>value-added 87:25</p> <p>valve 357:11</p> <p>variable 370:11</p> <p>variations 350:3</p> <p>varies 240:4 370:4,4</p> <p>varieties 345:16 346:5</p> <p>various 27:24 29:3,13 32:14 37:14 39:4,14 126:14 147:6 208:8 216:6 231:23 362:24 363:25</p> <p>vary 356:2 370:8</p> <p>varying 295:16</p> <p>vast 271:7 308:20 324:22 374:1</p> <p>vegetable 294:8 311:16 312:10 338:21</p> <p>vegetables 58:22 59:11 59:23 74:22 293:24 309:14 338:18 341:9 347:11 361:1</p> <p>vegetation 138:4 261:12</p> <p>Ventura 325:23 337:13 388:2</p> <p>venture 364:9 386:18,19</p> <p>verbally 134:16</p> <p>verbiage 159:11</p> <p>verification 31:23 61:15 221:8,8,13 224:7 304:21</p> <p>verified 203:16 292:4</p> <p>verifies 67:9</p> <p>verify 33:9 42:6 60:23 65:7 209:14 223:18 224:4,5,8 289:2,4 304:19</p> <p>verifying 209:19</p> <p>verse 150:11</p>	<p>version 192:21 200:6 355:7 364:6</p> <p>versus 42:17 129:15 137:2 161:20 181:20 217:25 337:6</p> <p>vested 223:5</p> <p>viability 134:6 378:8</p> <p>viable 178:7</p> <p>vice 3:5 10:24 209:4</p> <p>victims 299:4</p> <p>videotape 11:7</p> <p>view 84:10,13 293:18</p> <p>viewed 113:17</p> <p>viewing 191:24</p> <p>views 28:24 206:2</p> <p>vigorous 169:1</p> <p>vigorously 104:12</p> <p>vineyard 33:23 52:22 56:9 75:3 199:9 315:20 336:21 379:22 381:17</p> <p>vineyards 58:21,24 59:12 79:1,1 337:9</p> <p>violation 63:23 64:4,4,6 64:22 118:5 189:9 255:19 257:6 348:23 349:3,25 350:7</p> <p>violations 48:6 63:21,25</p> <p>violative 84:3</p> <p>Virsik 4:12 304:4 306:1 306:2,2,5,5,8</p> <p>virtually 83:18 251:21 374:10</p> <p>visit 188:24 214:12</p> <p>visits 215:13</p> <p>visual 190:11</p> <p>vital 315:25</p> <p>VOC 364:3</p> <p>voice 286:2,4</p> <p>voices 299:17 300:17</p> <p>volume 106:9</p> <p>voluntarily 81:3</p> <p>voluntary 29:19,24 33:3 75:9 77:3 88:25 203:19 204:4 249:21 249:23</p> <p>volunteer 324:12 329:3</p> <p>volunteers 329:8</p> <p>vote 104:20 108:21 196:14 246:10 288:2 321:14 330:2,14 332:9 333:16,24 334:23 374:21 377:1,10,10 380:5</p> <p>voting 23:4 195:21 287:7 335:4</p> <p>vs 307:6</p> <p>vulnerable 252:14 299:1 303:3 332:11</p> <p>V-i-r 306:5</p> <p>V-i-r-s-i-k 306:2,8</p> <p>V6 378:22</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>W 3:11</p> <p>Wade 9:10,10,11</p> <p>wait 41:18 50:12,18,20 73:23 117:7 253:18 321:15,16 328:18 371:22 374:8</p> <p>waiting 50:15 117:3 244:13 374:18 376:24</p> <p>waiver 1:1 2:1 9:20 10:3 10:16 17:20 23:2</p>	<p>26:15 29:15 33:1 52:5 53:17,19 54:2,17 62:11 63:15,17 65:25 75:8 81:1 93:12 107:21 108:9,12,23 112:19 113:8 114:10 123:16 124:5,21 135:12,15 153:8,13,15 191:10,12,16 196:9 203:18,23 208:2 222:21 227:14,16 231:9 234:16 241:24 242:15 244:2 249:24 250:4 260:21 287:21 287:23 288:12 289:2 290:11 293:3 296:23 296:24 297:14,17,25 321:15 323:17,18 351:14 362:13</p> <p>waivers 31:16,17 81:6 180:3 204:23</p> <p>wallet 219:18</p> <p>wall-to-wall 75:17</p> <p>walnuts 80:1</p> <p>want 8:1 9:14,15 12:16 13:17 16:13 17:5 21:7 22:20 39:17 50:12 55:25 56:6 63:10 65:11 68:5 71:15 73:8 73:12,23 79:7,9 80:13 83:8 84:8 85:25 88:23 89:12 97:7 101:17,18 116:12 125:1 131:18 131:21 146:18,19 150:25 151:1 155:16 157:5,22 162:25 165:1 171:11 175:9,10 177:20 178:7 179:22 179:24 180:21 184:15 184:23 190:11 191:14 193:13 200:16 202:7 202:14 203:8 205:25 207:17 209:7,11 211:14 220:16,18,21 221:16,25 223:25 224:2 227:6,7,13 228:13,16,20 237:17 240:13 244:24 246:1,3 246:11 248:2,11 249:7 254:12,12,24 260:17 261:10 265:8,15 266:18 267:9,23,23,24 268:19 269:20,24,25 270:6,6,11,13,19 271:4 272:11,12,13 275:5,5,9 278:1 280:25 281:14 282:6 283:11 284:2 288:5,18 288:19 290:13 292:19 293:2,20 294:16 295:8 295:11 302:9,22 303:25 308:15 309:2 310:21 311:1 319:23 321:1,14,24,24,25,25 326:2,14 327:12 328:2 328:14 332:24 334:12 334:22 335:2 339:22 342:4 345:20 348:1,22 349:16 350:10 359:15 364:7,19 365:10 368:5 371:5 386:6,8,16,22 386:25 387:2,6</p> <p>wanted 10:6 13:22 50:11 73:17 107:22 128:15</p>	<p>128:20 129:3 132:11 132:13 134:3 156:9 169:1 178:21 184:12 197:21 206:1 213:7 228:17 240:1 241:18 248:18 259:1 322:19 368:7 373:5 374:12,13 376:18 386:9</p> <p>wanting 169:17 261:9 269:16 318:20</p> <p>wants 16:12 56:17 87:25 96:17 265:7 266:13 277:25 354:9</p> <p>War 256:20</p> <p>warnings 364:16</p> <p>warrant 113:10</p> <p>wary 259:18</p> <p>Wash 195:13</p> <p>washing 271:17</p> <p>wasn't 12:15 81:12 87:2 99:2 118:21 122:20 147:10 162:16 252:20 257:23 265:3 329:11 369:15 371:3</p> <p>waste 1:1 2:1 9:20 10:17 10:17 23:2 25:1 26:18 34:18 37:17 63:15 65:22,23 66:1,1,4 90:17 139:5 141:3 176:24 317:7,11</p> <p>Watch 320:12</p> <p>watching 92:16</p> <p>water 1:9 2:10,18 3:3 6:5 7:8 8:5,6,7,8,12,13,24 10:22 14:4,9 17:3,23 19:4 23:6,7,11 24:3,19 24:22 25:1,7,14,16 26:8,11,16,18,19,20 26:25 28:3 29:14,16 29:22 30:1,4,4,9,11,13 30:21,24 31:8,20,22 32:2,11,15,19 33:9,12 33:18 34:4,13,24 35:16 36:7,17,23 37:10,18 38:3,5,7,17 38:22,25 39:5,15,16 40:2 42:25 43:9,10,21 44:2,2,11 45:1 46:6 47:9,17 48:7,9,14,17 49:6 51:4,13 52:2,7,10 52:13,15,16,24 53:1,2 53:7,10,20,24 54:5,21 54:23 55:9,17 56:8,10 56:12,19 57:5,10,22 58:12,16 59:1 60:10 60:17,22 61:3,5,15,18 61:21,22,23 62:9,15 62:16,18,19 64:20,22 64:25 65:11,17,19 66:2,25 67:3,5 68:20 68:25 69:8,15,20,22 69:25 70:4,8,24,25 71:1,10,14,16,17,17 71:19 74:13 76:3,17 78:21 79:14 85:21,22 88:23 90:1,2,3,11,17 90:23 91:9,9,11,15 92:4,8 96:5,6,9,11,14 96:18 98:15 102:9,15 103:20 104:8,12,19,23 107:25 111:7 114:4,8 114:25 117:19,21,21 117:25 121:17 131:14 132:19 133:5 134:3,25</p>
--	---	--	--	--

A6028BD
PANEL HEARING MARCH 14, 2012

<p>135:18,20,22 138:15 138:22 139:8,14,15,19 140:2,6,11,13,20 144:3 148:17,18 149:1 149:3,14,18 150:13 152:4 154:23 156:18 156:20,22 166:21 168:17 171:2 172:6,7 173:11,13,14,14 174:6 174:9,11,12 175:17,22 176:2,3,25 179:19 180:1,2,15 181:1,9,24 182:1,10,15 183:4 186:24,25 187:1,1 194:1 195:18 196:1,2 196:5,8 197:11 201:9 202:19,23,25 204:11 204:19 205:11,12,17 205:23 206:17 207:5 207:16,22 208:8,15,19 209:2,24 210:1,3,5,7 211:22 212:15 213:5 214:3,11,15,16 215:18 215:19 216:18 217:16 217:17,21,21 222:11 223:8 225:24,25 226:12,20,22,24 227:7 229:14,19,21,24,25 230:1,7,10,18,19 231:2,14,18,24 232:24 233:8 234:13 235:5 242:5,6,9,13,16,18 243:15,19 244:12,17 244:22 245:9 246:3,10 246:13,14,21,25 247:1 247:6,15 248:4,5,8,10 248:13,14,16,20 250:17,17,19,21 251:12 252:2 253:20 253:22 254:1 255:12 255:17,19,21 256:1,5 256:8,21 258:5 259:5 259:11,12 261:11,17 261:23 262:1,5,9,24 263:13 266:9 267:20 267:21 269:4 271:1,16 271:17 272:9 273:2,21 274:12,13 277:5,12,19 278:11 279:9,20 280:22 281:9,14,17 286:6,17,20 287:5 288:5,8,23 291:4 293:15,17,19 295:14 295:23 296:5,6,8,16 296:21 299:5,8,9 300:2,5 301:4,5,12,15 302:23 304:10,17 305:12,17 308:19 309:19,25 310:2,24 311:7 312:11,19 314:3 314:8 315:7 316:1,9 317:7,11 318:1,11 320:2,25 321:9,9,22 322:12,14,23 323:3 324:2,5,6,10,11,12,15 324:16 327:8,11,18,21 328:1,3,6,7,10 329:21 330:2,25 331:7,8 333:9,10 334:17 335:13,18 336:24 337:6 339:14 344:16 345:18 348:12 349:17 350:13 351:2,4,5,18 351:19 352:17 357:16</p>	<p>360:8 361:6,6,8 362:17 364:1 365:12 365:16 367:4 372:22 375:8,12,18 376:3,13 376:13 378:5,7,11 379:6,14 380:16 381:22,23 382:20,21 382:24,25 383:14 384:12 386:13 waterbodies 30:24 watered 276:18 386:9 waterfall 287:24 waters 30:25 31:2 44:14 46:7,11 49:2 50:3 71:4 121:10 263:8 271:11 322:20 323:11 watershed 34:9 57:12 187:7,24 188:15 195:7 195:8 213:11 227:21 230:17 231:10,15 233:8 235:24 242:5,7 242:22 243:18 296:8 322:17 watersheds 36:6 195:11 308:8 Watson 230:13 316:14 317:3 318:5 Watsonville 103:1 way 7:15 9:3 15:20 16:17 23:23 25:5,10 25:11 75:25 77:1 79:16 82:10 83:20,25 85:5,20 96:17 101:2,8 104:5 105:14 120:15 121:1 132:14 159:11 159:20 160:9 165:16 175:7 180:11 185:10 191:22 192:6 193:5,5 195:24 198:18 204:13 208:4,5,5,7 209:9 211:13,19 216:23 218:2 221:15 222:5,8 227:15 234:8 237:3 243:6 250:13 261:9 274:7 277:11,17,24 278:1,3 279:15 280:13 287:7 301:7 312:6,10 312:13 319:1 321:15 323:14 339:13 344:17 345:14 349:16 371:17 372:12 378:1,15 379:16 ways 27:24 91:13 127:23 193:22 215:17 216:15 225:1 286:13 303:18 345:17 348:13 WDRs 185:12 weaken 321:23 Weapons 14:8 website 46:18,19 100:7 385:4 websites 274:18 Wednesday 2:20 6:2 116:2 weed 236:18 week 162:14 272:17 299:23 308:17 368:16 weekend 286:23 weeks 316:21 368:16 weigh 381:4 weighs 89:20 weighted-aggregate 359:19 weighted-average 356:4</p>	<p>weird 352:24 welcome 6:6 7:4 332:23 370:22 wells 25:24,25 40:6 44:23 56:3 90:2 91:6 117:23 118:3 246:17 248:23 249:16,17 250:18 251:19,21 257:9 271:1,1,2 301:13 329:25 336:11 336:20 340:7 370:13 375:8 380:18 went 100:3 103:11 105:24 123:25 126:9 126:16,22 178:20 213:24 246:24 280:20 280:22 weren't 26:1 west 302:5 379:21 381:14 Western 132:21 197:7,8 307:5 wet 236:17 wetland 30:17 155:14,15 230:5,14 231:2,5,8,25 234:13,17 235:17 262:19 278:6,7,20 wetlands 57:11 155:13 155:17 195:14 228:25 229:4,8,18 230:3,8,13 230:24 231:13,17,23 232:14,15 233:12 234:4,11 235:14 236:21 275:5 Wey 9:7 we'll 7:14,19,19 9:24 10:13 14:11 15:22 21:15 23:9,14 63:9 64:1 73:13 77:8 81:6 86:2 88:19 89:10 98:10 117:11 131:13 135:24 145:21 147:19 158:11 159:22 232:6 233:21 237:17 255:5 275:1 283:23 316:22 352:9 364:19 369:21 we're 27:1,2,9,18,24 28:1,3,18 39:4 44:18 45:1 46:13 49:8,22 63:8 69:13,19,23 71:18 79:10,16,24,25 81:7 84:2 85:1 89:10 91:25 92:5,9 98:9,12 98:19 115:16,21 117:2 120:18 130:24 147:7 148:22 158:18 169:1 179:6 181:18 185:10 186:17 199:14 203:7 211:1 215:19 219:4,5 219:6,7,7 226:7,9,11 227:10 248:13 251:4 252:24 253:1 257:20 259:7,11 260:8 261:1 261:24 263:13 264:14 280:1 282:2 284:15 287:21 288:11 295:8 312:9,9 313:24 330:4 330:8,10,10 335:4,25 338:4 340:3 347:14 349:21 350:14 352:4 356:6 357:23 358:24 358:25 362:25 368:2 368:10 372:2,7 373:6 377:7 379:20</p>	<p>we've 16:1 23:12,20 25:18,19 33:25 43:25 48:18 49:19 54:7 66:21 68:6 75:1 76:12 89:1 117:7 127:24 128:2 129:19 134:19 136:9 138:18 144:19 147:18 151:12 161:14 161:16,21 174:15 177:5,16 182:6 189:11 195:9 213:18 217:2 225:2 232:12 244:23 245:11 250:12 261:3 262:12,15 263:24 264:3 271:25 288:6 311:18,20 313:5,16 320:3 328:15 359:12 372:3 379:16 385:13 whatnot 294:19 wheat 88:6,13 WHEREOF 388:16 wherewithal 77:11 whine 319:1,2 328:19 whining 328:15 Whitaker 4:7 283:4,7,7 285:20,23,24 286:1 white 212:4 326:10 Whitney 195:4 197:1 wholesale 128:12 wide 75:9 136:14 260:23 widely 295:16 296:4 widespread 26:24 32:22 38:7 48:6 49:23 271:2 332:6 wildlife 67:22 Wiley 4:21 330:17 332:20 333:19,20,20 335:9 William 374:25 378:20 willing 84:14 209:19 236:14 303:17 win 80:11 96:20,20 wind 197:20 window 8:16 247:19 Winds 262:19 wine 315:4,8,8,12,22,23 380:3 wineries 315:6 win-win 239:17 240:6 wiped 95:14 wish 11:23 73:22 92:14 193:25 220:11 257:18 322:11 wishes 115:18 172:16 190:21,24 wishful 264:2 withdrawn 154:5 withholding 83:18 witness 109:7 388:16 witty 128:14 Wolff 3:6 4:3 6:24,25 10:1,8 11:2 199:5,6,7 329:9 women 42:21 wonder 141:14 wonderful 190:20 284:23 307:12 wondering 78:12 81:21 158:21,22 162:4 220:2 224:20 375:9 Worcester 3:17 45:21 45:24 46:1,3,5 59:7 119:3,7,19,24 121:20 122:10 208:17 263:19</p>	<p>word 72:24 79:7,8 133:20 137:25 150:9 202:2 227:21 282:14 worded 152:22 words 48:21 137:20 141:1 198:10 263:6 267:13 273:8 279:12 354:17 361:20 Worester 52:8 119:13 work 23:17 64:3 67:16 74:25 76:14,23,23 77:1,1,13 80:6,23 82:5 82:7,12,14 102:1 112:11 115:2 156:3 158:15 161:4 169:7,9 169:15 172:21 187:14 188:3 191:21 192:22 195:12 196:15 200:1 206:20 210:14 225:11 227:12 229:2 234:3,21 235:5,25 236:2,9,22 237:7 240:11 245:15 246:5,6,13,13 257:22 257:24 259:14 286:24 294:1,21 296:3 297:6 303:15,22 304:12 312:2 315:15 318:20 319:9 320:4,5 325:10 327:13 347:24 348:1,8 348:18,22 352:20 353:3 354:24 356:10 356:11,18 358:14 363:15 371:15 376:13 377:19 385:16 386:17 386:25 workable 80:10 98:3,9 98:17 333:10 350:19 worked 8:14 75:12 86:20 86:25 112:17 114:7 207:20 209:16 229:4 320:4,14,15 351:15 376:15 worker 93:25 94:20 workers 93:2 286:10 298:23 302:1 working 8:18 14:3,6 48:15 66:5,6 68:7 80:9 81:7 83:22 89:8 94:1 103:1 120:5 131:13 133:2 134:12 156:19 158:22 167:15 170:19 172:20 182:16,18 192:18,19,21 193:10 201:14 205:5 206:17 206:18 211:22 216:5 233:25 234:6 244:17 245:14 259:8 260:15 287:18 288:14 294:19 296:10,24 297:2 310:11 320:19 323:19 325:17 326:19 327:14 332:16 337:14 352:22 377:19 works 74:25 77:18 82:9 166:17 186:23 227:1 342:11 364:20 371:14 373:7 workshop 17:19 18:7 28:10,19,21 64:18 66:21 113:13 144:12 163:7 265:6 341:17 workshops 12:16 34:11 43:2 68:23 102:25 world 74:23 87:24</p>
---	--	---	--	---

A6028BD
PANEL HEARING MARCH 14, 2012

<p>247:15 256:20 260:23 worried 66:25 80:18 379:11 worse 71:20,21 198:11 216:19 253:18 254:2,3 263:22 267:18 301:17 372:1 374:4 worth 13:4 86:18 104:6 223:11 worthy 220:7 wouldn't 13:17 218:3 222:1 283:5 284:5 285:5,13 303:12 339:8 woven 237:5 Wow 334:1 wrap 123:13 182:20 wrapped 313:11 write 216:3 220:11 writing 217:13 259:17 269:11 297:24,25 307:25 344:3,3 written 13:5 17:15 18:2 18:9,20 19:17,22,23 20:2 28:25 29:3,6 37:17 40:12,23 41:24 130:6 133:8 134:15 138:20 148:14 157:10 162:17 200:7 210:7 256:11 275:7 344:4 wrong 124:1 247:18 257:13 306:11 343:3 354:3 wrote 255:14 273:15 287:1 320:21 www.depo.com 1:23 W-i-l-e-y 333:21 W-o-l-f-f 199:7</p> <hr/> <p style="text-align: center;">X</p> <p>x 173:24</p> <hr/> <p style="text-align: center;">Y</p> <p>y 173:24 yeah 41:7,13 45:18 63:3 77:22 78:2 97:7 106:11 119:19 121:7 125:2 163:13,17 184:10 214:1,6 219:22 220:11,20 221:2 222:5 222:11 228:17,17 241:5 255:10 258:5 284:7 340:2 372:21 381:12 year 81:11,18 82:2 88:16 88:17 90:6 111:9 128:18,19 171:19 173:4 178:1 179:12 180:8 206:25,25 209:1 211:10 213:7 214:15 214:22 217:18 234:22 236:7 238:21 243:23 244:3 248:8,23 252:16 294:9 297:1 299:1 326:9,9 330:5 336:15 338:19,20,21 341:17 349:9 358:9 368:3 369:16 376:17 385:13 yearly 213:6 years 13:4 23:13 28:18 32:13 41:11 43:12 49:10 51:7 64:14 65:5 66:7 68:8 71:12 75:18 76:5 81:2 83:14 85:23</p>	<p>86:11 90:6,24 92:10 104:14 108:16 127:22 128:11 135:19 149:1,1 173:3,5 176:3,4 198:1 198:17 203:5,5 207:1 207:14 212:17 213:16 216:25 234:10 244:4 244:19 246:7 247:3 250:6,6,10 255:9,13 255:25 256:2,9 259:15 261:11 287:22 288:7 288:13 291:19 294:12 295:22 303:6 317:20 318:24 319:3 323:20 326:9 328:16 333:22 334:1 338:10 339:23 340:16 349:5 358:8,8 358:10 369:14,15 374:15 376:20 379:17 379:20 Yep 221:6 yesterday 17:12 18:4 19:3 20:23,23 162:8 178:20 249:8 258:21 264:16 yesterday's 197:16 yield 212:18 Young 3:4 6:4,5,11,12 6:13 7:1,23 9:19 10:11 10:15,23 13:7,23 16:24 18:23,25 19:7 19:24 21:4,6,10,13,17 22:11 40:18 45:9,13 45:20 50:8,10,14,17 50:19,21 63:1,5,9 66:8 66:11 72:25 73:12,17 74:2 77:20 78:2 82:19 82:25 86:5 89:14 91:22 92:17 93:8,9 97:5 98:23 99:1,3,13 99:15 101:13,16 102:3 105:6,11 106:7,11,13 107:4 115:11 116:6 117:6,10 121:6 123:10 124:24 125:6,9,12 128:24 131:10 132:3 132:15,16 151:6 157:18,25 158:2,9,16 159:4,17,25 161:25 163:5,19,23,25 164:15 164:23 165:1,9,17,20 182:23 183:1 184:1 185:5 186:1 187:21 189:14,17 190:16,20 194:4,7,9,11,18,24 195:3 196:18 197:1 199:1,4 206:7,11 213:23 218:7 223:13 223:16 227:22 228:1,6 228:9,16,20 234:24 235:3 236:4 237:21,23 240:16,22 241:1,4,7 241:10,14 242:24 244:9 256:16 258:9,12 258:14 259:1 260:6,10 265:10,12,16,20 266:2 266:5,19,21 267:3,11 268:22 269:1,6,8,18 270:3,11,18,20 276:25 278:25 281:7,10,13,16 281:19 282:17,19 283:3,6,8,10,13 284:7 284:10,12,15,17 285:2 285:7,15,19 287:10</p>	<p>289:6,22 290:2,17 291:8,13 293:9 295:3 296:17 298:9,13,17,20 300:7 302:4,6,8,13,15 304:3 305:25 307:15 309:5,8 310:14 311:9 313:2 314:16,18 315:1 315:23 316:12 317:1 318:4 320:6,9 322:3 323:22 325:5 326:22 327:2,6 328:22,25 330:13,15 332:19 333:18 335:8 337:15 337:17 338:24 339:2,6 340:23 342:14,17,20 342:23 343:6,11,15,22 346:16,19 347:19 348:21 349:2,23 350:2 350:6,17 351:21,24 356:10,12,16 360:11 360:20 363:17,18 364:23 366:19,24 368:8 369:4,7,10 373:1 374:23 375:10 375:15,17 376:5,8 377:15 378:19 379:1 381:2 384:8,10,17,22 385:5,7,20 387:6,11 yucky 212:4</p> <hr/> <p style="text-align: center;">Z</p> <p>z 173:24 zebra 310:17 zero 217:5 349:12 Zigler 36:6 zone 185:4 338:2 344:19 zones 364:14</p> <hr/> <p style="text-align: center;">\$</p> <p>\$1.8 315:9 \$100 248:15 \$100,000 217:20 \$12 30:7 \$120 331:22 \$13,000 379:15 \$15,000 247:6 298:25 \$17 238:21 \$179,000 368:3 369:4 \$3 43:14 \$30,000 219:15 \$300,000 217:9 \$32,000 248:8 \$35 248:13 \$37.50 248:9 \$44 30:6 \$50,000 218:6,15 \$500,000 219:1 \$600 30:10 111:9</p> <hr/> <p style="text-align: center;">0</p> <p>0.00 242:2,3 0.9 242:3 06 241:24 07 241:24</p> <hr/> <p style="text-align: center;">1</p> <p>1 27:11 48:16 52:12,19 54:22,25 55:1,21 56:20,22 58:15,17,20 60:2,4 68:1 110:15 133:9 135:10 136:18 136:22 147:24 175:14 200:19,21,22 204:9</p>	<p>205:8 227:19 248:6 264:4 293:25 294:10 304:15 309:14 336:23 338:22 339:24 346:11 346:20 347:3,16,20 353:14 361:1 373:12 380:12 381:5,11,21 382:2,7,14,15,22 383:11 1A 143:10,10,22 149:9 1B 142:25 143:9,11 1st 20:4 1,000 106:18,21 107:2 218:21 1,300 310:11 1.0 341:13 360:7 1.1 349:15,19 1.2 346:1,20 347:3,9,20 349:19 353:14 360:7 1.5 37:25 349:14 375:8 1.8 105:4 1:00 284:3 1:20 115:23,25 116:3 10 14:8 48:14 142:3 145:18 147:3 213:2 242:2 301:14 303:5 10th 25:21 27:1 291:20 10-acre 297:11 10:00 284:11 285:6,7,12 10:30 284:6,8 285:11,13 285:16,18 387:12,13 100 38:4 47:15 48:19 68:10 85:23 141:18,21 142:2 202:3 227:3 253:11 282:1 326:6,12 337:21,22 338:6 340:25 341:3,6,10,11 341:12 342:5 347:17 361:15,16 374:8 378:18 379:9 380:1 101 243:5 102 3:20 103 56:25 59:20 60:6,14 367:4 368:1,2 107 3:20 11 142:15 242:2 254:14 292:14 306:15,20 366:16 11th 147:3 11:20 73:14 12 107:7 110:16 115:9 211:25 243:23 244:3 298:25 338:3 12.8 242:1 12:15 115:15,25 120 248:4 335:23 336:5 338:5 341:19,24 342:10 345:16 13 125:18,19,22 130 248:4 132 3:21 13267 153:10 185:22 13269 180:2,4 13304 153:10 135 3:21 14 1:12 2:13,21 6:2 116:2 137:5,10 336:18 14th 6:7 179:14 14-month 338:14 339:7 140 143:2 345:17 1400 238:6 15 149:1 176:3,4 200:22 203:5 207:1 303:6 317:16 358:8</p>	<p>150 229:7 1500 200:23 154 249:17 16 102:22,23 104:2 105:15,20,20 129:5 179:3 250:18 255:13 160 75:18 163 379:17 17 3:16 124:25 129:5 17th 74:7 175 201:25 176,000 310:12 18 147:22 180k 370:25 1800 302:18 1850 379:7 189 3:22 19 137:14 138:2 191 3:22 1910 217:2 195 3:23 197 3:23 1970s 75:20 1975 74:19 1988 118:23 1989 249:13,20 257:5 199 4:3 106:20 1992 206:17 1995 195:9 217:4 1996 119:12</p> <hr/> <p style="text-align: center;">2</p> <p>2 27:13 52:23 54:20 55:20 56:21 58:10,25 59:4,9,10,12 60:2,4 64:25 94:18 97:17 110:15 135:10 136:18 136:22 139:23 142:21 147:24 154:2 160:17 175:14 200:19,21,22 205:8 227:19 264:5 291:20 293:24 294:8 297:10 298:5 309:15 310:10 325:1 335:16 335:19 336:18 338:20 339:19,24 373:12 379:25,25 382:3,5,7 383:5,6,8,9,15 2C 138:12 2nd 20:4 2,000 29:2 51:5 200:22 2.1 369:6 2.8 349:12 355:13 20 32:13 76:4 138:12 152:13 156:6 171:11 171:17 207:1,14 211:10 219:14 291:13 297:11 317:17 336:10 379:19 20,000 199:18 200 79:23 320:15 345:25 345:25 366:5 200,000 348:11 200-acre 297:11 2000 20:8 30:3 238:15 2001 246:23 250:16 2002 31:4 250:16 2003 166:20 180:7 185:7 185:9 2004 18:10,12,13,14,14 20:8,10,13,17,19 26:15 29:15 31:8 32:12,18,25 33:14 49:19 52:5 53:17,19</p>
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A6028BD
PANEL HEARING MARCH 14, 2012

<p>54:2,3,17 62:10 64:14 68:18 86:16,18,21 112:16 114:10,11 123:16 124:5,8 183:9 208:2 226:17 227:16 249:24 250:4 260:18 274:17,21,23 290:4 2005 217:4 230:3 241:24 296:25 2006 246:24 2008 28:18 272:10 2009 229:25 242:2 245:10 2010 35:19 102:16 105:23 325:13 2011 17:17,22 18:6 19:4 30:3 40:10,21 42:1,2 45:6,7,16 78:8 106:3 110:12 119:20 125:18 144:14,20 145:8 154:8 292:10 2012 1:12 2:13,21 6:2 27:9 28:19 54:19 63:17 107:15 115:5 116:2 179:6 203:7 250:3 327:24 388:17 2014 179:14 203:7 2015 361:2 2016 179:18 206 4:3 21 148:6 149:16 153:5 165:21 382:8,10 210 346:8 22 121:13 149:15,16,17 153:16 263:8,9 220 346:9 228 4:4 237 4:4 24 14:10,11 107:15 115:5 154:15 24th 107:13 240 346:2,7 241 4:5 244 4:5 25 171:19 175:5 200:23 381:7 384:6 250 107:1 346:8 258 4:6 260 4:6 27 249:18 28 3:16 383:20,24 285 4:7 287 4:7 288-3376 1:22 29 116:20 290 4:8 291 4:8 293 4:9 295 4:9 296 4:10 298 4:10</p> <hr/> <p style="text-align: center;">3</p> <p>3 27:13 53:6,8 55:7,11 55:15,23 56:23,24 58:11,12 59:15,20 60:3,4,5,5,8,11 94:18 95:3 97:15,17 101:5 110:17,22 111:7,8,15 121:12,13 125:18,20 125:22 126:15 130:15 130:17 136:18,22,25 137:2,4,9 138:13 141:19,19 142:21</p>	<p>153:25 154:3 160:18 175:14 200:19,21,24 205:8 208:20 227:19 252:25 253:12 264:5,7 292:2,3 293:25 294:9 295:25 297:10 298:5 309:15 310:10 312:11 325:1 336:22 338:21 340:19,21 341:9 349:5 352:3 360:23 366:5 367:3,6,10,13,22,24 367:25 379:25,25 380:12 382:5,7 3.0 349:21 30 76:4 168:22,24 179:11 214:21 217:24 379:22 300 4:11 97:17 101:14 107:1 302 4:11 303 30:25 303D 384:12 304 4:12 306 4:12 307 4:13 309 4:13 310 4:14 311 4:14 315 4:15 316 4:15 317 4:16 318 4:16 32 121:9 140:25 320 4:17 322 4:17 323 4:18 325 4:18 326 4:19 329 4:19 33 333:22 334:1 330 4:20 332 4:20 333 2:19 4:21 335 4:21 35 137:14 363 4:22 365 4:22 367 4:23 37 3:17 373 4:23 375 4:24 376 5:3 377 5:3 379 5:4 38 138:1,2 140:9 151:17 39 151:25</p> <hr/> <p style="text-align: center;">4</p> <p>4 9:20,24 10:3 32:2 110:12 137:11 140:8 140:11,15 177:5,6,7 204:9 367:12 4th 307:6 4,000 238:16 4.0 349:21 4.2 242:1 4:00 285:1,3 40 111:22 152:13 336:10 40s 256:20 40,000 214:21 401 232:19 404 152:9 42 110:14 382:7 42,000 238:7</p>	<p>42-year 363:24 43 152:13 450 230:14 46 3:17 110:15 153:5 48 249:15</p> <hr/> <p style="text-align: center;">5</p> <p>5 139:3 166:18,20 183:3 183:8,10,25 184:2 185:1,3,20,24 186:3 186:18,23,24 190:3 197:17 224:14 345:4,5 348:25 355:13 360:17 5's 183:17 184:18 185:5 5,400 369:6 5.5 242:1 5:00 249:3 50 3:18 52:18 53:5 149:2 153:16 212:17 218:1,2 242:14 281:25 297:12 336:17 383:13 50k 218:20 500 53:5,14 107:1 197:9 315:5 500-acre 334:15 51,000 56:25 60:7 512 137:24 52 154:11 55 56:23 367:9 559 307:6 56 116:9 121:12 154:15 58 60:17</p> <hr/> <p style="text-align: center;">6</p> <p>6 140:22 337:24 6,000 120:22 60 14:4,6,14 166:2 171:4 261:14 367:9 60,000 302:19 329:23 61 60:13 175:5 310:6 62 248:23 63 3:18 684.4 269:7</p> <hr/> <p style="text-align: center;">7</p> <p>7 141:5 204:9 7th 28:19 70 74:21 310:10 70,000 87:17,18 73 340:3 74 3:19 75 326:12 78 341:17,19,21</p> <hr/> <p style="text-align: center;">8</p> <p>8 17:16 18:23 141:17 203:5 213:2 255:13 8:30 283:23 80 214:1 227:4,5 341:21 80,000 200:20,25 800 1:22 82 175:15 176:12,16 84 8:20 176:20 247:9 85 176:20 86 141:1 176:20 315:10 87 176:21 8934 1:24 2:22 388:5,21 895 283:20</p> <hr/> <p style="text-align: center;">9</p> <p>9 36:7 336:14 9CAL 307:6 9th 292:10</p>	<p>9-acre 231:22 9-point 220:23 9:00 284:2 9:30 2:20 387:15 90 196:10 90s 29:16 30:19 49:11 900-plus 107:8 92 3:19 93405 2:20 96 59:22 97 60:3 373:8,10,18 374:10</p>
--	--	--	---